

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0935V

UNPUBLISHED

JUDSON COSTLOW,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 4, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for petitioner.

Ronalda Elnetta Kosh, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On June 27, 2019, Judson Costlow filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered Guillain-Barré syndrome (“GBS”) caused in fact by the influenza vaccine he received on September 16, 2016. Petition at 1, ¶¶ 2, 20. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 30, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his GBS. On December 4, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$125,000.00, representing compensation for his pain and suffering. Proffer at 1. In the Proffer,

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$125,000.00, representing compensation for his pain and suffering, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JUDSON COSTLOW,

Petitioner,

v.

**SECRETARY OF HEALTH AND
HUMAN SERVICES,**

Respondent.

No. 19-0935V

**Chief Special Master Corcoran
ECF**

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On June 27, 2019, Judson Costlow (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), for an injury petitioner allegedly sustained as a result of an influenza (“flu”) vaccination administered on September 16, 2016. Petition at 1. Petitioner alleges that he suffered Guillain-Barré Syndrome (“GBS”), which is an injury listed on the Vaccine Injury Table for the flu vaccine. On October 30, 2020, the Secretary of Health and Human Services (“respondent”) filed a Supplemental Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a GBS Table injury, and on October 30, 2020, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 20; ECF No. 23.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$125,000.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$125,000, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

| | |
|-------------------------------------------------|---------------------|
| Lump sum payable to petitioner, Judson Costlow: | \$125,000.00 |
|-------------------------------------------------|---------------------|

Respectfully submitted,

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¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

s/ Ronalda E. Kosh
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