

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1253V

UNPUBLISHED

KIM BANKOWSKI,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 21, 2021

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On August 22, 2019, Kim Bankowski 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 she suffered a shoulder injury related to vaccine administration (“SIRVA”) following an influenza (“flu”) vaccine on November 2, 2017. Petition at ¶1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On February 2, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a Table SIRVA. On October 20, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$95,707.08, representing \$92,500.00 as compensation for pain and suffering and \$3,207.08 as compensation for actual past unreimbursed expenses. Proffer at 1-2. 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¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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 section 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 \$95,707.08 in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 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.

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**SECRETARY OF HEALTH AND
HUMAN SERVICES,**

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Respondent.

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RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On February 1, 2021, respondent filed a Rule 4(c) Report, conceding that petitioner's claim meets the Table criteria for a SIRVA injury. On February 2, 2021, the Court issued a Ruling on Entitlement finding petitioner entitled to compensation under the Vaccine Act.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded the following, and requests that the Chief Special Master's decision and the Court's judgment award:

- a. a lump sum payment of **\$92,500.00**, which represents compensation for pain and suffering, *see* **42 U.S.C. § 300aa-15(a)(4)**, and
- b. a lump sum payment of **\$3,207.08**, which represents compensation for past unreimbursed medical expenses, *see* **42 U.S.C. § 300aa-15(a)(1)**.

These amounts represent all elements of compensation to which petitioner would be entitled under **42 U.S.C. § 300aa-15(a)**.¹ Petitioner agrees.

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

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respondent recommends that petitioner be awarded a lump sum payment of **\$95,707.08**, in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

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Dated: October 20, 2021