

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1508V

UNPUBLISHED

BRIAN DAVIS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 28, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for Petitioner.
Darryl R. Wishard, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On September 30, 2019, Brian Davis 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 a shoulder injury related to vaccine administration (“SIRVA”) as a result of a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccination that he received on July 27, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 16, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On December 22, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$77,500.00. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with the

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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).

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 \$77,500.00 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.

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No. 19-1508V ECF

Chief Special Master Corcoran

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On September 30, 2019, Brian Davis (“petitioner”) filed a petition for compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. Petitioner alleges that a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccination that he received on July 27, 2018 in his left arm caused a shoulder injury related to vaccine administration (“SIRVA”). Petition at 1. On December 16, 2020, respondent filed his Vaccine Rule 4(c) report, conceding a Table injury for SIRVA. On that same day, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioner was entitled to compensation for SIRVA.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$77,500.00** for pain and suffering damages. This amount represents all elements

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$77,500.00**, in the form of a check payable to petitioner.²

Petitioner agrees.

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

C. SALVATORE D’ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
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/s/Darryl R. Wishard
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Dated: December 22, 2020

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.