

In the United States Court of Federal Claims

No. 99-522V
September 24, 2008

KENNETH ROBINSON,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Order; question of duplication
of Dr. Geier's fees in this case
and in other case

ORDER¹

On May 14, 2008, petitioner filed an Application for Attorneys' Fees & Costs totaling \$36,047.51. On May 20, 2008, petitioner filed an Amended Application for Attorneys' Fees & Costs totaling \$36,076.50, of which \$16,827.04 were for attorneys' fees, \$19,019.92 for attorney's costs, and \$219.54 for petitioner's own costs.

On June 27, 2008, respondent filed Respondent's Opposition to Petitioner's Application for Attorneys' Fees and Costs. On page 7 of Respondent's Opposition, respondent states inter

¹ Because this order contains a reasoned explanation for the special master's action in this case, the special master intends to post this order on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

alia that respondent objects to Dr. Mark Geier's bill of \$8,400 for 42 hours of work. This case never went to hearing since petitioner asked for a ruling on the record which resulted in a dismissal. Dr. Geier lists his activities as follows on pages 20-23 of the initial fee application:

8/10/00	consultation (1 hr)	\$ 200.00
some time in 2000	consultation (3 hrs)	600.00
"	VAERS search (5 hrs)	1,000.00
"	compiling VAERS (3 hrs)	600.00
"	scientific paper search (8 hrs)	1,600.00
"	scientific paper review (2 hrs)	400.00
"	generating reviews (1.5 hrs)	300.00
"	possible witness list (1.5 hrs)	300.00
"	preparing report (2 hrs)	400.00
"	travel time (4 hrs)	800.00
"	talking to experts (4 hrs)	800.00
some time in 2002	consultation (2 hrs)	400.00
"	VAERS search (2 hrs)	200.00
"	library research (2 hrs)	400.00
"	report compilation (1 hr)	200.00

Dr. Geier never filed an expert report in this case. As counsel know, although petitioner alleged a demyelinating illness and there was some question in the medical records whether or not he had one, the conclusion of his doctors was that petitioner had a stroke.

On July 7, 2008, petitioner filed Petitioner's Response to Respondent's Opposition to Petitioner's Application for Attorney's Fees and Costs and Amended Application for Attorney's Fees.

In petitioner's Response, petitioner does not address respondent's concern that Dr. Geier's activities are included in a fee petition the petitioner's counsel in the instant case also filed as petitioner's counsel in Riggins v. Sec'y of HHS, No. 99-382V, on April 1, 2008, before chief special master Gary Golkiewicz, reflecting "all hours and expenses related to his filed

Hepatitis B cases ... on general Hepatitis B proceedings, for the benefit of all of Counsel's Hepatitis B cases.”

The undersigned assumes that the 42 hours of work and travel time for which Dr. Geier billed in the instant action were used to generate evidence in the Omnibus proceedings before former special master Margaret M. Sweeney concerning whether hepatitis B vaccine causes demyelinating diseases. These cases, including the instant action, were reassigned to the undersigned in 2006. Petitioner's counsel in the instant action was petitioner's counsel in two of the four paradigm cases (Gilbert and Werderitsh) in the Omnibus proceeding. Petitioner's counsel is also counsel for 36 of the total 65 hepatitis B vaccine-demyelinating cases.

Dr. Geier submitted as part of petitioner's application for fees and costs in Riggins a bill for \$97,443.43 (see pp. 31 of the fee application; see pp. 51-63 of the fee application for his and his son David Geier's specific billing items). This work was performed from 1999-2007 and involves VAERS data review, library research, scientific articles research, compilation of information, meeting with doctors and petitioner's counsel, and travel for these activities, all dealing with the question whether hepatitis B vaccine causes adverse reactions.

In the Riggins application, for 1999, Dr. Geier billed 20 hours for VAERS data review, literature review, meetings with Mr. Shoemaker, and preparation of materials concerning hepatitis B vaccine adverse reactions. See pp. 51-52 of Riggins application.

In 2000, Dr. Geier billed 4 hours for literature review, summary, and preparation of materials on hepatitis B vaccine adverse reactions. He also billed 2 hours of travel time to meet with Mr. Shoemaker. See p. 53 of Riggins application.

In 2001, Dr. Geier billed 6 hours for literature review, summary, and preparation of materials on hepatitis B vaccine adverse reactions. See *id.*

In 2002, Dr. Geier billed 48.5 hours for literature review, summary, preparation of materials, and meetings with petitioner's counsel. He also billed for 16 hours of travel time. See pp. 53-57 of Riggins application.

It is conceivable that of the 96.5 hours that Dr. Geier billed in the Riggins case which involved VAERS data review, literature review, summaries, preparation of materials, meetings with petitioner's counsel, and travel time, all devoted to hepatitis B vaccine adverse reactions, that there is a duplication with the 42 hours Dr. Geier has billed in the instant action for 2000 and 2002 VAERS data review, literature review, summaries, preparation of materials, meetings with petitioner's counsel, and travel time concerning whether hepatitis B vaccine causes the four specified demyelinating diseases. But it is impossible for the undersigned to tell whether there is duplication here with the Riggins fees and costs application.

The undersigned is concerned that Dr. Geier not be paid twice for the same work. Petitioner is ORDERED to file a response by October 17, 2008 to the question whether the 42 hours Dr. Geier has billed in this instant action is duplicated by the hours and work that he has billed in Riggins.

IT IS SO ORDERED.

September 24, 2008
DATE

s/ Laura D. Millman
Laura D. Millman
Special Master