

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 09-0076V

Filed: 11 September 2009

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DOLORES HOLZEM, *
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 Petitioner, *
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 v. *
*
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
*
 Respondent. *
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Mark L. Krueger, Esq., Krueger & Hernandez, S.C., Baraboo, Wisconsin, for Petitioner;
Katherine C. Esposito, Esq., United States Department of Justice, Washington, District of Columbia,
for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 27 August 2009, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Dolores Holzem, Petitioner, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. Petitioner, Dolores Holzem, filed a Petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 through 34 (the "Vaccine Program"). The Petition seeks compensation for injuries allegedly related to Petitioner's receipt of the influenza vaccine, which vaccine is included on the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Dolores received his influenza vaccine on 23 October 2007.
3. The vaccine was administered within the United States.

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

4. Dolores alleges that she suffered brachial plexus neuritis and left sural, left superficial peroneal and left distal tibial and peroneal motor neuropathies, caused in fact by her receipt of the flu vaccination.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.

6. Respondent denies that Dolores' condition was caused by her flu immunization.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that [this Decision] should be entered [by the Undersigned] awarding the compensation described in paragraph 8 of this [Decision].

8. As soon as practicable after an entry of judgment reflecting [this Decision], and after Petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services [shall] issue the following payments:

a. A lump sum of \$51,501.39 in the form of a check payable to Petitioner, which amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). Pursuant to General Order #9, Petitioner [represents that she] has not advanced any reimbursable costs in pursuit of her claim.

b. A lump sum of \$11,900.00 in the form of a check payable to Petitioner and Petitioner's attorney, Mark L. Krueger, Krueger & Hernandez SC, for attorneys' fees and costs.

9. Payment made pursuant to paragraph 8 of this [Decision] [shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

10. The parties and their attorneys further agree and stipulate that, except for any award for reasonable attorneys' fees and litigation costs, the money provided pursuant to this [Decision] [shall] be used solely for the benefit of Dolores as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

11. In return for the payments described in paragraph 8, Petitioner, on her own behalf and on behalf of her heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Petitioner, resulting from, or alleged to have resulted from, [the influenza vaccination administered to her] on 23 October 2007, as alleged by Petitioner in a petition for vaccine compensation filed on or about 6 February 2009, in the United States Court of Federal Claims as petition No. 09-0076V.

12. If Dolores should die prior to receiving the payment described in paragraph 8(a), [the Stipulation] shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

13. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

14. This [Decision] expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

15. All rights and obligations of Petitioner hereunder shall apply equally to Petitioner's successors and assigns.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

s/ Richard B. Abell
Richard B. Abell
Special Master