

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
E-Filed: February 28, 2012

* * * * *	*	
SOLMAZ MODEER,	*	UNPUBLISHED
Petitioner,	*	
v.	*	No. 11-563V
SECRETARY OF THE	*	Chief Special Master Campbell-Smith
DEPARTMENT OF	*	
HEALTH AND HUMAN SERVICES,	*	Proffer on Award of Compensation;
Respondent.	*	“Tdap” Vaccine; Abscess
* * * * *	*	

Brian Burchett, Sullivan, Hill, Lewin, Rez & Engel, San Diego, CA, for petitioner.
Alexis Babcock, U.S. Dep’t of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On September 2, 2011, Solmaz Modeer (“petitioner”) filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“Vaccine Program”).²

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

In the petition, petitioner alleges that she received a tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccine on December 15, 2010, and thereafter suffered from an abscess.

On December 1, 2011, respondent filed a Rule 4(c) report, indicating that “based on the medical records and available medical literature, respondent concedes that petitioner’s abscess was caused-in-fact by the vaccination she received.” Rule 4 Report at 4.

Based on the persuasive factors supporting petitioner’s claim and respondent’s own determination that petitioner’s claim merits compensation, the undersigned finds that petitioner is entitled to compensation under the Vaccine Program. Accordingly, a determination of damages is appropriate.

On February 27, 2012, respondent filed a Proffer on Award of Compensation (“Proffer”). Petitioner agrees with all aspects of the Proffer.

Based on the record as a whole, the undersigned finds that the Proffer is reasonable and appropriate and that petitioner is entitled to an award as stated in the Proffer. Pursuant to the terms stated in that Proffer, the court awards to petitioner:

A lump sum payment of **\$68,576.40**, in the form of a check payable to petitioner, representing compensation for past unreimbursable expenses (\$44,948.90), lost wages (\$3,627.50), and pain and suffering (\$20,000.00).

Proffer at II.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties’ Proffer.³

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is 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

SOLMAZ MODEER,)	
)	
Petitioner,)	No. 11-563V
v.)	Chief Special Master
)	Campbell-Smith
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

Respondent proffers that petitioner does not have any anticipated future medical expenses. Petitioner agrees.

B. Lost Wages

The parties agree that petitioner was unable to work for a brief period of time due to her vaccine-related injury. Therefore, respondent proffers that Solmaz Modeer be awarded lost earnings in the amount of \$3,627.50 as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Solmaz Modeer should be awarded \$20,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursable Expenses

Respondent proffers that petitioner has submitted documentation for \$44,948.90 in past unreimbursable medical expenses. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens against her.

II. Form of the Award

The parties recommend that the compensation provided to Solmaz Modeer should be made through a lump sum payment as outlined below, and request that the Chief Special Master's decision and the Court's judgment award the following:

A lump sum payment of \$68,576.40, representing compensation for past unreimbursable medical expenses (\$44,948.90), lost wages (\$3,627.50), and pain and suffering (\$20,000.00), in the form of a check payable to petitioner, Solmaz Modeer.

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

III. Summary of Recommended Payments Following Judgment

Lump Sum paid to petitioner, Solmaz Modeer:	\$68,576.40
---	--------------------

Respectfully submitted,

TONY WEST
Assistant Attorney General

MARK W. ROGERS
Acting Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch, Civil Division

GLENN A MACLEOD
Senior Trial Counsel
Torts Branch, Civil Division

/S/ALEXIS B. BABCOCK
ALEXIS B. BABCOCK
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Telephone: (202) 616-7678

Dated: February 27, 2012