

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 09-597V

Filed: May 12, 2010

KIMBERLY K. GAINEY and WILLIAM	)	
DERRICK GAINEY	)	
	)	
Petitioners,	)	
	)	
v.	)	Entitlement; influenza vaccine;
	)	Liability conceded
	)	
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

Robert T. Bleach, Soloway Law Firm, Pensacola, Florida for Petitioner.

Lynn E. Ricciardella, U.S. Department of Justice, Washington, D.C. for Respondent.

### UNPUBLISHED RULING ON ENTITLEMENT<sup>1</sup>

On September 11, 2009, Kimberly and William Gainey<sup>2</sup> filed a petition for compensation alleging that Kimberly suffered a shoulder injury as a result of a trivalent influenza vaccination, which she received on November 16, 2001. She seeks compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (2010).

On April 19, 2010, Respondent conceded that Ms. Gainey is entitled to compensation. The medical records support the conclusion that Ms. Gainey was improperly administered an influenza vaccination into the wrong tissue on her left shoulder. Resp't Status Report, Apr. 19, 2010, at 1.

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<sup>1</sup> This Order will be published and posted to the Court of Federal Claims website. As provided by Vaccine Rule 18(b), each party has fourteen days within which to request the redaction "of any information furnished by that party (1) that is 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." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of timely objection, the entire document will be made publicly available.

<sup>2</sup> The undersigned notes that, under the Vaccine Act, only Kimberly Gainey may seek compensation. In a concurrently filed order, Petitioner has been asked to amend the caption in this case.

Special masters may determine whether a petitioner is entitled to compensation based upon the record. A hearing is not required. § 300aa-13; Vaccine Rule 8(d).

Therefore, after considering the evidence, the Court finds that Petitioner has established that she is entitled to compensation.

Any questions may be directed to my law clerk, Tom Broughan, at (202) 357-6353.

**IT IS SO ORDERED.**

s/ Dee Lord  
Dee Lord  
Chief Special Master