

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

JENNIFER LOCANE,	*	
	*	No. 99-589V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: May 2, 2013
	*	
SECRETARY OF HEALTH	*	Attorneys' fees and costs; stipulation of
AND HUMAN SERVICES,	*	fact; award in the amount to which
	*	respondent has not objected
Respondent.	*	
	*	

UNPUBLISHED DECISION ON FEES AND COSTS¹

Clifford J. Shoemaker, Shoemaker and Associates, Vienna, VA, for Petitioner;
Melonie J. McCall, U.S. Department of Justice, Washington, D.C., for Respondent.

Respondent filed a stipulation of fact concerning final attorneys' fees and costs in the above-captioned matter on March 27, 2013.² Previously, Ms. Locane filed an application for attorneys' fees and costs requesting \$131,276.46 in attorneys' fees and costs and \$172.75 in petitioner's costs. Attorneys' Fees Application, filed Jan. 8, 2013. By motion dated February 22, 2013, petitioner amended her request for attorneys' fees and costs to \$137,026.46. In informal discussions, respondent raised objections to certain items in petitioner's application. In response, petitioner amended her request to a total of \$122,000.00 in attorneys' fees and costs

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

² In the stipulation, the parties stated that "[i]n accordance with General Order No. 9, petitioner expects to file within the next two weeks a statement indicating that she personally incurred \$172.75 in proceeding on this petition." On April 18, 2013, after exceeding the estimated date of submission, petitioner was ordered to file the statement by April 26, 2013. The order noted that the result of petitioner's delay was the postponement of the instant decision. On April 26, 2013, petitioner filed a timely motion for enlargement of the deadline to May 28, 2013. The motion was granted. Petitioner filed her statement on April 29, 2013.

and \$172.75 in petitioner's costs, an amount to which respondent does not object. The Court awards this amount.

Ms. Locane filed a petition for compensation on August 4, 1999, alleging that she was injured by the hepatitis B vaccine she received on August 29, 1997. The petition was filed near the last day petitions alleging that the hepatitis B vaccine caused an injury before August 6, 1997 could be filed. Ms. Locane did not file any medical records with her petition, as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A).

For approximately six years, Ms. Locane's case did not advance. During this time, counsel for petitioners alleging an injury from the hepatitis B vaccine, and counsel for respondent attempted to establish a mechanism for resolving cases involving the hepatitis B vaccine. The efforts, although undertaken in good faith, did not succeed.

After the need for individual adjudication of cases became apparent, development of Ms. Locane's case started in 2006. Ms. Locane filed her first set of medical records in 2006. Subsequently, Ms. Locane filed an expert report from Dr. Joseph Bellanti. On August 6, 2007 respondent filed her Rule 4 report, maintaining that Ms. Locane was not entitled to compensation. Respondent supported her position by submitting an expert report from Dr. Andrew S. Warner.

A hearing on entitlement was held on April 17, 2008 in Washington, D.C., followed by the submission of post-hearing briefs, additional evidence and several expert reports (Drs. Bellanti and Meyer Solny) from petitioner, and a supplemental expert report (Dr. Warner) from respondent. On February 17, 2011, the undersigned issued a decision finding petitioner was not entitled to compensation. Decision, 2011 WL 3855486, aff'd, 99 Fed. Cl. 715 (Fed. Cl. Jul. 15, 2011), aff'd, 685 F.3d 1375 (Fed. Cir. Jul. 12, 2012).

Even though compensation was denied, a petitioner who brings her petition in good faith and who has a reasonable basis for the petition may be awarded attorneys' fees and costs. See 42 U.S.C. § 300aa-15(e)(1). Here, counsel for petitioner gathered and filed medical records, obtained two experts to testify on petitioner's behalf, presented the case at hearing, and litigated the matter to the Federal Circuit. Thus, because petitioner's counsel acted in good faith and because there was a reasonable basis for proceeding, petitioner is eligible for an award of attorneys' fees and costs. Respondent does not contend that petitioner failed to satisfy these criteria.

Ms. Locane seeks a total of **\$122,000.00** in attorneys' fees and costs for her counsel. Additionally, in compliance with General Order No. 9, Ms. Locane filed a statement indicating she incurred **\$172.75** in out-of-pocket litigation expenses while pursuing this claim. Respondent has no objection to the amount requested for attorneys' fees and costs, and petitioner's costs.

Upon review, the Court finds the request reasonable and awards the following compensation:

- A. A lump sum of \$122,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Clifford J. Shoemaker, for attorneys' fees and costs available under 42 U.S.C. §300aa-15(e); and**
- B. A lump sum of \$172.75 in the form of a check payable to petitioner for out-of-pocket expenses incurred by petitioner in proceeding on the petition.**

The Court thanks the parties for their cooperative efforts in resolving this matter. The Clerk shall enter judgment according to this decision.³

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

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.