

I. Procedural History

According to the attorneys' time sheets, they began working on Mr. Souza's case on July 11, 2007, when Mr. Souza contacted them. The attorneys began collecting medical records. See Pet'r Appl'n, filed Mar. 23, 2010, tab A at pdf page 4-11 (time entries for Oct. 24, 2007 - Feb. 28, 2008, March 10, 2008 - May 15, 2008, June 3, 2008 - June 26, 2008, and July 1, 2008 - July 7, 2008, showing review of records before the petition was filed).

Mr. Souza filed his petition on July 16, 2008, without any medical records. Mr. Souza did not explain why the petition was filed without medical records as required by the statute and rules of procedure. Shortly after filing the petition, Mr. Souza filed a motion to authorize a subpoena for medical records. Mr. Souza filed the majority of his medical records on September 4, 2008, and, later added more medical records.

Mr. Souza filed an amended petition on September 18, 2008. As described in the amended petition, some of Mr. Souza's treating doctors associated his symptoms with the tetanus vaccine. See Exhibit 2 at 1, exhibit 9, 30-31, exhibit 15 at 94, 96-98, 100-102, 139, 232; exhibit 17 at 14, exhibit 21, at 2-3.

Respondent responded to Mr. Souza's amended petition in a report filed pursuant to Vaccine Rule 4(c). Respondent asserted that Mr. Souza had failed to establish that he was entitled to compensation because he has not provided: (1) a reliable medical theory causally connecting the vaccination and his alleged injury, or (2) a logical sequence of cause and effect showing that the vaccination was the reason for his injury. See Resp't Rept. filed Dec. 2, 2008.

Mr. Souza attempted to obtain the report of an expert to support his petition. An opinion from an expert would have assisted Mr. Souza in establishing that he was entitled to compensation. See 42 U.S.C. § 300aa-13 (indicating that a special master may award compensation based upon "medical records or . . . medical opinions."). Mr. Souza, eventually, determined that the search for an expert was unlikely to succeed. Thus, Mr. Souza filed a motion requesting a ruling based upon the existing record because he will be "unable to prove that [he] is entitled to compensation." Pet'r Mot., filed Dec. 11, 2009, at 1.

A January 12, 2010 decision denied Mr. Souza's petition for compensation. This decision found that because the records filed by Mr. Souza did not uncover any evidence that he suffered a "Table Injury" and because Mr. Souza did not offer an expert opinion in support of his claim, the only alternative was to deny Mr. Souza's petition.

Mr. Souza filed an application for attorneys' fees and costs on March 23, 2010. After informal discussions with respondent, Mr. Souza revised his request and filed an amended application on March 31, 2010. Mr. Souza's revised request seeks **\$31,921.18** in attorneys' fees and costs. Additionally, Mr. Souza filed a statement of costs in compliance with General Order

No. 9, stating that he incurred **\$454.79** in litigation costs. The total amount requested is **\$32,375.97**. Respondent does not object to this amended request for attorneys' fees and costs.

II. Analysis

Because Mr. Souza did not prevail upon his claim that the tetanus vaccine caused him an injury, he is not entitled to an award of attorneys' fees and costs by right. Instead, unsuccessful petitioners may be awarded attorneys' fees and costs when a petition in good faith and there was a reasonable basis for the petition. See 42 U.S.C. § 300aa-15(e)(1).

Mr. Souza satisfies the standard for having a reasonable basis because his treating doctors suggested that the tetanus vaccine may have contributed to his illness. Exhibit 15 at 96-98 (Dr. Rahman stated that Mr. Souza "had an adverse reaction to tetanus toxoid. He had severe arthralgias, swelling, etc."); exhibit 15 at 232 (Dr. Farbota noted that Mr. Souza had a "[q]uestionable reaction to tetanus shot where he got diffuse athralgias."); exhibit 17 at 14 (Dr. Gilbert Egekeze noted that Mr. Souza "had a bad reaction to tetanus."). This quantum of evidence – although not satisfying all the elements required for compensation – suffices to meet the reasonable basis standard.

Because Mr. Souza satisfied his burden of showing that his petition was supported by a reasonable basis and was filed in good faith, Mr. Souza may be awarded a reasonable amount of attorneys' fees and costs. After reviewing the request, the undersigned finds that the requested amounts are reasonable. Thus, petitioner is awarded attorneys' fees and other litigation costs as follows:

A lump sum of \$32,375.97 in the form of a check payable to petitioner and petitioner's counsel of record, the law firm of Conway, Homer & Chin-Caplan, P.C.

The court thanks the parties for their cooperative efforts in resolving this matter.

The Clerk shall enter judgment accordingly.¹

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master

¹ 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.