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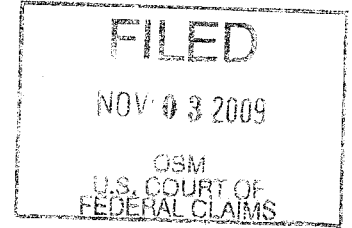
In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-151V

Filed: November 3, 2009

Not for publication



RONIE FEARON,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Damages decision based on stipulation; Tetanus and Diphtheria toxoid ("Td") vaccine

Howard D. Mishkind, Cleveland, OH, for petitioner. Darryl R. Wishard, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDDING DAMAGES¹

On October 30, 2009, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that she suffered from brachial neuritis of the left arm following a tetanus and diphtheria toxoid ("Td") vaccine. Respondent denies that petitioner's brachial neuritis was caused in fact by her vaccination. Nonetheless, the parties agreed to resolve this matter informally.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. a lump sum of **\$80,00.00** in the form of a check made payable to petitioner; and
- b. a lump sum of **\$8,190.13** in the form of a check made payable to petitioner and petitioner's counsel, Howard D. Mishkind, Esq., for attorney's fees and costs. In compliance with General Order #9, petitioner states that she has not incurred any expenses in proceeding on the petition.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: Nov. 3, 2009

Laura D. Millman

Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

RECEIVED & FILED
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OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

RONIE FEARON,)	
)	
Petitioner,)	
)	
v.)	No. 09-151V
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	Special Master Millman
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On March 10, 2009, petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa- 10 et seq. (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of a tetanus and diphtheria toxoid ("Td") vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a Td vaccine on or about March 22, 2006 in her left arm.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained left arm pain about five days after receipt of the Td vaccine, and was later diagnosed with brachial neuritis of the left arm. She claims a Table injury, or, in the alternative, that her left arm pain was caused-in-fact by receipt of the Td vaccine.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her alleged vaccine-related condition.
6. Respondent denies that petitioner's conditions, to include left arm pain and alleged

brachial neuritis, were caused-in-fact by the Td vaccine.

7. Maintaining their above-stated positions, the parties nevertheless agree that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, 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 will issue the following vaccine compensation payment:

a. A lump sum of \$80,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

b. A lump sum of \$8,190.13 in the form of a check payable to petitioner and petitioner's counsel, Howard D. Mishkind, Esquire, for attorneys' fees and costs. In compliance with General Order #9, no out-of-pocket expenses were incurred personally by petitioner in proceeding on the petition.

9. Payment made pursuant to paragraph 8 of this Stipulation will 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 the money provided pursuant to this Stipulation, except for the award for attorneys' fees and costs, will be used solely for the benefit of petitioner 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 payment described in paragraph 8(a), petitioner in her individual capacity, 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 Td vaccine administered to her on March 22, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about March 10, 2009, in the United States Court of Federal Claims as petition No. 09-151V.

12. If petitioner should die prior to receiving the payment described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

13. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be null and void at the sole discretion of either party.

14. This Stipulation 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.

END OF STIPULATION

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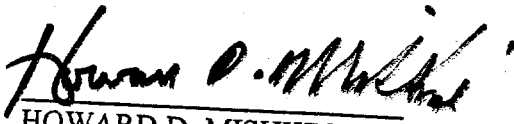
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Respectfully submitted,

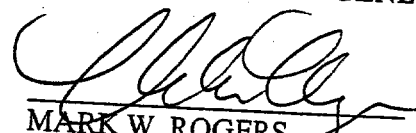
PETITIONER:


RONIE FEARON

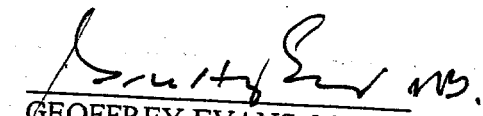
**ATTORNEY OF RECORD FOR
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Dated: 10/30/09

CERTIFICATE OF SERVICE

I certify that on this 30th day of October, 2009, this STIPULATION was filed in the U.S. Court of Federal Claims via personal service, and that a true and correct copy of the same was served via first-class mail, postage pre-paid, upon:

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BECKER & MISHKIND CO., L.P.A.
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