

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-551V

Filed: August 17, 2012

CAREY NEAL,

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Special Master Zane

Petitioner,

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Stipulation; attorneys' fees and costs

v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Isaiah R. Kalinowski, Maglio, Christopher & Toale, Sarasota, FL, for Petitioner;
Althea W. Davis, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

On August 13, 2012, the parties in the above-captioned case filed a Stipulation of Fact Concerning Attorneys' Fees and Costs (Stipulation) memorializing their agreement as to the appropriate amount of attorneys' fees and costs in this case. After informal discussions with Respondent, Petitioner requests a total award of \$19,500.00. In accordance with General Order #9, Petitioner has filed a submission indicating that Petitioner has incurred no out-of-pocket expenses. As explained below, the undersigned hereby awards the amount to which Respondent does not object.

Petitioner alleged that he suffered Guillain-Barre Syndrome ("GBS") as a result of his receipt of an influenza vaccination on October 6, 2009. Petition ("Pet.") at 1-3. Petitioner did not file an expert report to establish causation. Thereafter, Petitioner moved for judgment on the record. In the ruling on this motion, compensation was denied. *Decision*, dated April 30, 2012.

¹ The undersigned intends to post this decision on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No.107-347, §205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. §3501 note (2006)). 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire ruling will be available to the public. Id.

Despite the denial of compensation, Petitioner may still be awarded attorneys' fees and costs, when his petition is brought in good faith and has a reasonable basis. *See* 42 U.S.C. §300aa- 15(e)(1). Here, at the outset of this case, Petitioner appeared to have a reasonable basis and counsel for Petitioner spent time preparing the case, gathering medical records and filing affidavits for Petitioner. But, when counsel was unable to secure an expert that could support Petitioner's claim for causation, it became evident to counsel that the case could not proceed. At that point, counsel for Petitioner took reasonable action by filing the motion for ruling on the record to get a quick resolution to the matter, thereby minimizing additional expenditure of resources and avoiding additional costs and expenses. In so doing, Petitioner's counsel acted in good faith. Petitioner had a reasonable basis for proceeding in that manner. Respondent does not contend that Petitioner failed to satisfy these criteria. Thus, Petitioner is eligible for an award of attorneys' fees and costs.

The parties have now stipulated that \$19,500.00 is a reasonable amount to be awarded for attorneys' fees and costs. After reviewing the request, the court finds the stipulated amount of \$19,500.00, in attorneys' fees and costs to be reasonable. Based on the request's reasonableness and pursuant to Vaccine Rule 13, the undersigned **GRANTS** the parties' requests as outlined in the Stipulation. The judgment shall reflect that Petitioner is awarded attorneys' fees and costs as follows:

in a check made payable jointly to Petitioner (Carey Neal) and Petitioner's counsel (Isaiah R. Kalinowski of Maglio, Christopher & Toale, PA) in the amount of 19,500.00.

The Court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

/s/ Daria J. Zane

Daria J. Zane
Special Master

² 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.