

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 09-84V
Filed: April 19, 2011
Unpublished

BEN D. SCHULTZ,	*	
	*	
Petitioner,	*	
	*	Stipulation; Influenza vaccine,
v.	*	flu; Guillain-Barré Syndrome,
	*	GBS
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

Mark L. Krueger, Krueger & Hernandez, Baraboo, W.I., for Petitioner.
Debra A. Filteau Begly, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On April 19, 2011, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that he suffered from Guillain-Barré Syndrome, GBS, as a consequence of the influenza vaccination he received on or about November 18, 2006. Petitioner further alleges that he experienced the residual effects of the injury for more than six months. Respondent denies that petitioner developed GBS caused-in-fact by his influenza vaccine and further denies that he experienced the residual effects of this injury for more than six months. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed April 19, 2011.

The court hereby **ADOPTS** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioner is awarded a lump sum of \$20,000.00 in the form of a check payable to petitioner; petitioner**

¹ The undersigned intends to post this decision on the website for the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). **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 a 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." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing.** Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

is also awarded a lump sum of \$56,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney of record for attorney fees and costs.² See Stipulation, ¶ 8, filed April 19, 2011.

The Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.³

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master

² In compliance with General Order #9, petitioner states he has incurred no out of pocket expenses in proceeding on this Petition. This amount awarded for attorney fees and costs is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of the Dept. of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).

³ This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. 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.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

BEN D. SCHULTZ,

Petitioner,

v.

**SECRETARY OF HEALTH AND
HUMAN SERVICES,**

Respondent.

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No. 09-84V
SPECIAL MASTER
GARY J. GOLKIEWICZ

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Petitioner received his influenza ("flu") immunization on November 18, 2006.¹

3. The vaccine was administered within the United States.

4. Petitioner alleges that he developed Gullian Barré syndrome ("GBS") that was caused by his flu vaccination, and that he has experienced the residual effects of this injury for more than six months.

¹ The records are inconsistent regarding the exact date of petitioner's vaccination. His vaccination record notes that he received his flu vaccination on November 15, 2006, but the treatment note that details the administration of his vaccination is dated November 18, 2006. Hereinafter, the date November 18, 2006, as used in this Stipulation, refers to any flu vaccination administered on November 15, 2006 and/or November 18, 2006.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.

6. Respondent denies that Petitioner developed GBS that was caused by his flu vaccination and denies that he has experienced the residual effects of this injury for more than six months.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and 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 payments²:

a. A lump sum of \$20,000.00 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); and

b. A lump sum of \$56,000.00 in the form of a check payable to petitioner and petitioner's attorney, Mark Krueger, Krueger and Hernandez S.C., for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. Petitioner and his attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

² Although a Medicaid lien was initially asserted in this case, this Stipulation does not contain a payment for Medicaid reimbursement because petitioner has asserted that through negotiations, he has obtained a complete waiver of any and all Medicaid liens with regard to his vaccine-related injury.

10. Payments 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.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation, 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).

12. In return for the payments described in paragraph 8, petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300 aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on November 18, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about February 12, 2009, in the United States Court of Federal Claims as petition No. 09-84V.

13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

14. 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 voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated 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. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner developed GBS that was caused by his flu vaccination, and that he has experienced the residual effects of this injury for more than six months.

17. All rights and obligations of petitioners hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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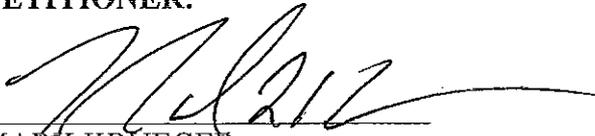
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Respectfully submitted,

PETITIONER:


BEN D. SCHULTZ

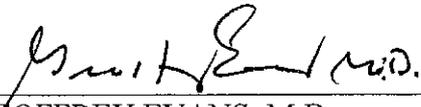
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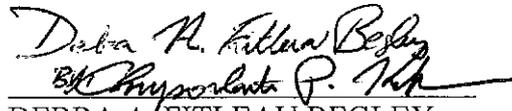
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Dated: April 19, 2011