

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

No. 10-25V
Filed: December 15, 2011
Unpublished

ED W. YOST,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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* Stipulation; Influenza vaccine, flu;
* Guillain-Barré Syndrome, GBS;
* Attorneys' fees and costs
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Diana Stadelnikas, Maglio Christopher & Toale, Sarasota, FL, for Petitioner.
Traci R. Patton, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION ON ENTITLEMENT AND
DECISION ON ATTORNEYS' FEES AND COSTS¹

GOLKIEWICZ, Special Master.

On December 15, 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 Guillain-Barré Syndrome (“GBS”) as a consequence of the influenza vaccination he received on October 26, 2007. Respondent denies that petitioner developed GBS as a result of the influenza vaccine he received and further denies that his current condition or any other injury was caused by the immunization. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed Dec. 15, 2011.

Further, on November 29, 2011, the parties filed a Stipulation of Facts Concerning Attorneys’ Fees and Costs [hereinafter “Fee Stipulation”]. The Fee Stipulation states that petitioners submitted a draft request for attorney fees and costs to respondent. Fee Stipulation at

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.

¶ 2. Respondent raised certain objections during informal discussions and, based upon those discussions, petitioner amends his fees and costs request. Id. at ¶ 3. Petitioner now requests \$23,325.00 in attorney fees and costs. Id. In compliance with General Order #9, the Fee Stipulation and an attached Statement states that petitioner did not incur reimbursable costs in this matter. Id. at ¶ 4. Further, respondent does not oppose petitioner's amended request. Id. at ¶ 5.

The court hereby **ADOPTS** the parties' said Stipulation on entitlement, attached hereto, and awards compensation, \$5,000.00 in the amount and on the terms set forth therein. See Stipulation, filed Dec. 15, 2011, attached. The court also awards petitioner attorney fees and costs in the amount of \$23,325.00.

Specifically, petitioner is awarded a lump sum of \$5,000.00 in the form of a check payable to petitioner individually; petitioner is also awarded a lump sum of \$23,325.00 in the form of a check payable jointly to petitioner and petitioner's attorney of record. See Stipulation, ¶ 8, filed Dec. 15, 2011; Fee Stipulation, filed Nov. 29, 2011.

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

IT IS SO ORDERED.²

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

² 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

ED W. YOST,

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v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 10-25V
Special Master Golkiewicz
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Ed W. Yost (“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 an influenza immunization on October 26, 2007.

3. The vaccine was administered within the United States.

4. Petitioner alleges that on or around November 20, 2007, he experienced the first symptom or manifestation of the onset of Guillain-Barré Syndrome (“GBS”), which petitioner alleges was caused in fact by the influenza vaccine.

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

6. Respondent denies that the influenza immunization caused-in-fact petitioner's GBS or his current condition or any other injury.

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 payment: a lump sum of \$5,000.00 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).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. 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).

13. In return for the payments described in paragraphs 8 and 9, 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. § 300aa-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 influenza vaccination administered on October 26, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about January 10, 2010, in the United States Court of Federal Claims as petition No. 10-25V.

14. 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.

15. 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.

16. 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.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the influenza vaccine caused petitioner's GBS or any other injury or his current condition.

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

END OF STIPULATION

Respectfully submitted,

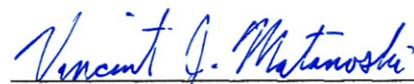
PETITIONER:


ED W. YOST

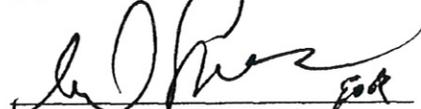
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Dated: 12-15-2011