

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-597V

Filed: April 6, 2011

KIMBERLY K. GAINNEY,)	
)	
Petitioner,)	NOT TO BE PUBLISHED
)	
v.)	Damages; decision based on proffer;
)	influenza (flu) vaccine; shoulder
SECRETARY OF)	injury.
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

Daniel Soloway, Soloway Law Firm, Pensacola, FL, for Petitioner;
Lynne E. Ricciardella and Vincent J. Matanoski, U.S. Dep't of Justice, Washington, D.C. for Respondent.

DECISION AWARDING DAMAGES¹

On September 11, 2009, Kimberly Gainey filed a petition seeking compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (2010), alleging that she suffered a shoulder injury as a result of a trivalent influenza vaccination that she received on November 16, 2001. Respondent conceded entitlement in this case, Resp't Status Report, Apr. 19, 2010, at 1, and the undersigned issued a ruling on entitlement on May 12, 2010.

On April 4, 2011, Respondent filed a Joint Proffer on Award of Compensation setting forth all items of compensation to which the parties proffered should be awarded to Ms. Gainey. Based upon the record as a whole, the undersigned finds the proffer reasonable and that Ms. Gainey is entitled to an award as stated in the Proffer. Pursuant to the Proffer, attached as Appendix A, the court awards Ms. Gainey:

- 1. A lump sum payment of \$955,924.50, representing life care expenses for Year One (\$20,139.45), lost earnings (\$797,886.52), pain and suffering (\$100,000.00), and past unreimburseable expenses (\$37,898.53), in the form of a check payable to petitioner, Kimberly K. Gainey;**

¹ The undersigned intends to post this 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, § 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.

2. An amount sufficient to purchase the annuity contract described in section II.B. of the Proffer attached as Appendix A.

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.

IT IS SO ORDERED.

s/ Dee Lord
Dee Lord
Special Master