

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-791V

Filed: December 17, 2010

SHARON KUHN,)	
)	NOT TO BE PUBLISHED
Petitioner,)	
)	
v.)	Stipulation; influenza (flu)
)	vaccine; skin rash, malaise,
SECRETARY OF)	weakness, shortness of breath,
HEALTH AND HUMAN SERVICES,)	rapid pulse, gastrointestinal issues.
)	
Respondent.)	
)	

Sheila A. Bjorklund, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, MN, for Petitioner;
Lynn E. Ricciardella, United States Department of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Chief Special Master.

On December 15, 2010, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Sharon Kuhn, alleged that she sustained various systemic symptoms, such as a skin rash, malaise, weakness, shortness of breath, rapid pulse, and gastrointestinal issues as a consequence of her receipt of the influenza vaccine on November 20, 2007, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R § 100.3(a). Ms. Kuhn seeks damages related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that Ms. Kuhn suffered an injury actually caused by her receipt of the influenza vaccine, and denies that her disabilities are sequelae of her alleged injury. Nonetheless, the parties have agreed informally to resolve this matter.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction “of any information furnished by that party (1) that is 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.” Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of a timely objection, the entire document will be made publicly available

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

- (1) A lump sum of **\$10,000.00, in the form of a check payable to petitioner, Sharon Kuhn**. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).
- (2) A lump sum of **\$10,699.37 in the form of a check payable to petitioner and petitioner's attorney, Sheila A. Bjorklund, of the law firm Lommen, Abdo, Cole, King & Stageberg, P.A.**, for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

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/ Dee Lord
Dee Lord
Chief 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.

ORIGINAL

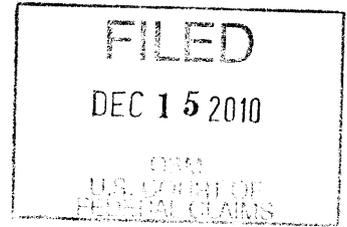
IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

SHARON KUHN,)
)
)
Petitioner,)
v.)
)
SECRETARY OF HEALTH AND HUMAN)
SERVICES,)
)
Respondent.)
_____)

No. 09-791V

Chief Special Master Lord
ECF



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 her influenza immunization on November 20, 2007.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained various systemic symptoms, such as a skin rash, malaise, weakness, shortness of breath, rapid pulse, and gastrointestinal issues as a consequence of her receipt of the vaccine.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.
6. Respondent denies that petitioner suffered an injury actually caused by her receipt of the influenza vaccine, and denies that her disabilities are sequelae of her alleged 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 payments:

- (a) A lump sum of \$10,000.00 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 \$10,699.37 in the form of a check payable to petitioner and petitioner's attorney, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. Petitioner and her 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. Sec. 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. sec. 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

10. The 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 her individual capacity, and on behalf of herself, her 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 influenza vaccination administered on November 20, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about November 17, 2009, in the United States Court of Federal Claims as petition No. 09-791.

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.

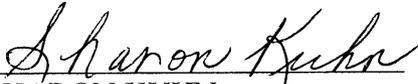
16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner suffered an injury that was caused in fact by the influenza vaccine; or that her current disabilities are sequelae of her alleged injury.

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

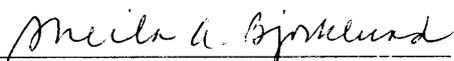
END OF STIPULATION

Respectfully submitted,

PETITIONER:


SHARON KUHN

**ATTORNEY OF RECORD FOR
PETITIONER:**


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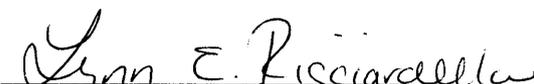
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Dated: December 15, 2010