

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
E-Filed: February 28, 2012

* * * * *	*	
JOSHUA SMITH,	*	
	*	UNPUBLISHED
Petitioner,	*	
	*	No. 10-486
v.	*	
	*	Chief Special Master Campbell-Smith
SECRETARY OF THE	*	
DEPARTMENT OF	*	Joint Stipulation on Damages;
HEALTH AND HUMAN SERVICES,	*	“Tdap” Vaccine; Optic Neuritis
	*	
Respondent.	*	
	*	
* * * * *	*	

Ronald Homer, Conway, Home & Chin-Caplan, P.C., Boston, MA, for petitioner.
Lara Englund, U.S. Dep’t of Justice, Washington, DC, for respondent.

DECISION¹

On July 28, 2010, Joshua Smith (“petitioner”) filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“Vaccine Program”).²

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ website, 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.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

In the petition, petitioner alleges that he received a tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccine on or about August 14, 2007, and thereafter suffered from optic neuritis.

Respondent denies that the Tdap vaccination caused petitioner to develop optic neuritis, any other injury or his current condition.

Nevertheless, on February 27, 2012, counsel for both parties filed a stipulation, which is attached to this decision, stating that a decision should be entered awarding compensation. The parties stipulated that petitioner should receive the following compensation payments:

- A lump sum of **\$125,000.00**, in the form of a check payable to petitioner; and
- A lump sum of **\$107.26**, in the form of a check payable jointly to petitioner and Georgia Department of Community Health, P.O. Box 1984, Atlanta, GA 30301, No. 111692905650, which represents compensation for reimbursement of the State of Georgia Department of Community Health lien.

These amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a). Stipulation at ¶ 8.

The parties further stipulated that they had not yet reached an agreement with respect to attorney’s fees and costs, but that they will submit to further proceedings to award reasonable attorneys’ fees and costs incurred in proceeding upon this petition. Stipulation at ¶ 9.

The undersigned finds the stipulation reasonable, adopts it as the decision of the court on damages, and approves the requested amount for petitioner’s compensation.

Accordingly, an award should be made in the form of a check payable to petitioner in the amount of **\$125,107.26**. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties’ stipulation.³

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia Campbell-Smith
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.

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

JOSHUA SMITH,)	
)	
Petitioner,)	
)	
v.)	No. 10-486V
)	Chief Special Master
SECRETARY OF)	Patricia Campbell-Smith
HEALTH AND HUMAN SERVICES,)	ECF
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Joshua Smith ("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 tetanus-diphtheria-acellular-pertussis vaccine ("Tdap"), which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received a Tdap vaccine on or about August 14, 2007.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the Tdap vaccine caused him to develop optic neuritis and that he experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.
6. Respondent denies that the Tdap vaccine caused petitioner's optic neuritis or any other injury or his current condition.

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 \$125,000.00 in the form of a check payable to petitioner; and
- b. A lump sum of \$107.26, which amount represents compensation for reimbursement of the State of Georgia Department of Community Health lien, in the form of a check payable jointly to petitioner and Georgia Department of Community Health, P.O. Box 1984, Atlanta, GA 30301, No. 111692905650.

The amounts above represent 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 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.

11. Payments 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.

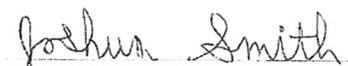
12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction 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 Tdap vaccination administered on August 14, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about July 28, 2010, in the United States Court of Federal Claims as petition No. 10-486V.

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.

Respectfully submitted,

PETITIONER:


JOSHUA SMITH

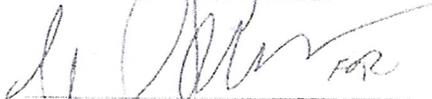
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Dated: 2/27/13