

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: August 10, 2010

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VICTORIA H. FRANKS,

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No. 09-0536V

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Petitioners,

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UNPUBLISHED

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v.

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Stipulation Regarding

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Compensation and Regarding

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

Attorneys' Fees and Costs; No

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Petitioner's Costs;

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Tetanus-Diphtheria Vaccine;

Respondent.

*

Alleged Brachial Neuritis

* * * * *

DECISION¹

On August 14, 2009, Victoria Franks (“petitioner”), filed a petition for compensation alleging that she suffered certain injuries as a result of receiving a tetanus vaccination on April 21, 2008. Among the injuries petitioner alleged that she had suffered as a result of receiving the tetanus vaccination were extreme pain at the injection site and swelling and extreme weakness in the arm where she received the tetanus vaccine. She sought an award under the National Vaccine Injury Compensation Program,

¹ Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless the decisions contain trade secrets or commercial or financial information that is privileged or confidential, or the decisions contain medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. Within 14 days of the filing of a decision or substantive order with the Clerk of the Court, a party may identify and move for the redaction of privileged or confidential information before the document’s public disclosure.

National Vaccine Injury Compensation Program² (the Act or the Program). 42 U.S.C. §§ 300aa-1 to -34 (2006).

On August 9, 2010, counsel for both parties filed a stipulation, stating that a decision should be entered awarding compensation and that the parties had also reached an agreement regarding attorneys' fees and costs. The parties stipulated that petitioner shall receive the following compensation:

A lump sum of \$ 85,000.00 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).

Stipulation ¶ 8(a).

The parties further stipulated that they had reached the following agreement with respect to attorneys' fees:

A lump sum of \$9,213.14 in the form of a check payable to petitioner and petitioner's attorney, Andrew D. Downing, for attorneys' fees and costs. In accordance with General Order No. 9, petitioner represents that no out-of-pocket expenses in proceeding on the petition, which is included in this sum.

Stipulation ¶8(b).

The undersigned 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 \$85,000.00. 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

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 the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

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.

The undersigned also approves the requested amount for attorneys' fees and costs as reasonable. Accordingly, an award should be made in the form of a check payable jointly to petitioner and Mr. Andrew Downing in the amount of \$9,213.14. 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.⁴

IT IS SO ORDERED.

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

⁴ 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

VICTORIA H. FRANKS,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 09-536V
SPECIAL MASTER
PATRICIA CAMPBELL-SMITH

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 Tetanus-diphtheria ("Td") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received her Td immunization on April 21, 2008.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she suffered brachial neuritis as a consequence of her Td immunization. Petitioner further alleges that she 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 on behalf of petitioner as a result of her condition.

6. Respondent denies that petitioner suffered brachial neuritis as a consequence of her Td immunization, and further denies that her current disabilities are sequelae of the alleged vaccine 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 \$85,000.00 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);

b. A lump sum of \$9,213.14 in the form of a check payable to petitioner and petitioner's attorney, Andrew D. Downing, Esq., 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 her 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.

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, on behalf of herself, and 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 Td vaccination administered on April 21, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about August 14, 2009, in the United States Court of Federal Claims as petition No. 09-536V.

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 the Td vaccine caused petitioner's brachial neuritis or current disabilities.

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

END OF STIPULATION

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Respectfully submitted,

PETITIONER:



VICTORIA H. FRANKS

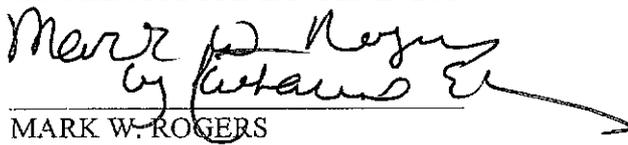
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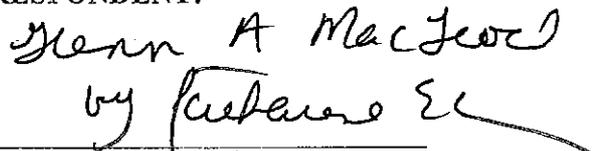
**AUTHORIZED REPRESENTATIVE
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Dated: 8/9/2010