

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-816V

Filed: September 21, 2012

PAUL L. CLEARY,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Attorneys' Fees and Costs;
Reasonable Amount Requested to
Which Respondent Did Not Object

Anne Toale, Sarasota, FL, for petitioner.

Glenn MacLeod, Washington, DC, for respondent.

ATTORNEYS' FEES AND COSTS DECISION¹

On November 24, 2009, petitioner, Paul Cleary, filed a petition seeking compensation under the National Vaccine Injury Compensation Program ("the Vaccine Program").² Petitioner alleges that he suffered ventricular fibrillation and cardiac arrest as a consequence of the influenza vaccination he received on November 28, 2006. Petitioner further alleges that he experienced the residual effects of this injury for more than six months.

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 National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (the "Act"). Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

Based on the persuasive factors supporting petitioner's vaccine claim and respondent's election not to challenge petitioner's claim, the previously presiding special master issued a decision finding that petitioner is entitled to compensation under the Vaccine Program on June 28, 2012, and awarding damages. See Decision.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300 aa-15(e). On August 23, 2012, petitioner's counsel filed a motion for attorneys' fees and costs.

Respondent objected. Counsel for the parties communicated electronically with the undersigned's chambers on September 21, 2012, and indicated the amount to which respondent would not object for payment. Petitioner has amended his application for attorneys' fees to a total amount of \$25,750.00, to which respondent's counsel did not object. The payment of \$25,750.00 shall be broken down to reflect payment of attorneys' fees and costs in the amount of \$7,000.00 to Donahue & Donahue, and payment of attorneys' fees and costs in the amount of \$18,750.00 to the Maglio, Christopher & Toale firm.³

Based on the reasonableness of petitioner's request and respondent's counsel's lack of objection to petitioner's counsel's fee request, the undersigned **GRANTS** petitioner's motion for approval and payment of attorneys' fees and costs. Petitioner's counsel certifies that his client had incurred no out-of-pocket expenses per General Order No. 9.

The undersigned awards a total of \$25,750.00 in attorneys' fees and costs payable as designated above. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGEMENT** in petitioners' favor in the amount of \$25,750.00 in attorneys' fees and attorneys' costs. The judgment shall reflect that the Donahue & Donahue firm may collect \$7,000.00 from petitioners and the Maglio Christopher & Toale firm may collect \$18,750.00.

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.⁴

IT IS SO ORDERED.

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

³ A consented motion to substitute counsel was filed by Ms. Toale of the Maglio, Christopher & Toale firm on September 20, 2010.

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.