

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: January 28, 2008)

DO NOT PUBLISH

JODI LYNN KABAT,)	
)	
Petitioner,)	
)	
v.)	No. 99-0438V
)	Attorneys' Fees; Attorneys' Costs;
SECRETARY OF)	Personal Expenses
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEYS' FEES, ATTORNEYS' COSTS AND PERSONAL EXPENSES¹

Petitioner, Jodi Lynn Kabat (Ms. Kabat), seeks an award of attorneys' fees, attorneys' costs and personal expenses as defined by General Order No. 9 for an action that she pursued under the National Vaccine Injury Compensation Program (Program).² She requests \$69,835.22. *See* Petitioner's Petition for Reimbursement of Attorneys' Fees and Costs (Fee Petition), filed January 28, 2008, at 2. Respondent does not object. *See* Fee Petition at 1.

Ms. Kabat did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to "award an amount of compensation to cover" Ms. Kabat's "reasonable attorneys' fees and other costs" as long as "the special master or court

¹ 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 decision" will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

determines that” Ms. Kabat possessed “a reasonable basis for the claim” and that Ms. Kabat filed the petition “in good faith.” § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master’s “discretion is not without limit.” *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent “special circumstances,” the special master “should ordinarily” award attorneys’ fees and costs to an unsuccessful petitioner. *Id.*, *citing Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully the record as a whole. Based upon his experience, the special master determines that an award of \$69,835.22 in attorneys’ fees, attorneys’ costs and personal expenses as defined by General Order No. 9 is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Ms. Kabat’s favor for \$69,835.22 in attorneys’ fees, attorneys’ costs and personal expenses as defined by General Order No. 9. The judgment shall reflect that Ms. Kabat’s attorney of record, David L. Terzian, Esq. (Mr. Terzian), may collect \$57,594.12 from Ms. Kabat. *See Fee Petition at 2.* In addition, the judgment shall reflect that Ms. Kabat’s former attorney of record, Clifford J. Shoemaker, Esq. (Mr. Shoemaker), may collect \$10,761.11 from Ms. Kabat. *See Fee Petition at 2.* Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

s/John F. Edwards
John F. Edwards
Special Master