United States Court of Appeals for the Federal Circuit

STEPHANIE DIMASI,
Petitioner-Appellant

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Respondent-Appellee

2022-1854

Appeal from the United States Court of Federal Claims in No. 1:15-vv-01455-AOB, Judge Armando O. Bonilla.

Before MOORE, *Chief Judge*, PROST and TARANTO, *Circuit Judges*.

PER CURIAM.

O R D E R

I

Stephanie DiMasi, at the time 47 years old and enrolled as a nurse-practitioner student, received an influenza vaccine on December 4, 2012. Appx. 15. She was admitted to the hospital on December 5, 2012, released the next day, and then readmitted on December 8, 2012. Appx. 83–90, 96–99. Just under three years later, Ms. DiMasi, through her counsel, filed a petition in the United States Court of Federal Claims (Claims Court) seeking

compensation under 42 U.S.C. §§ 300aa-10 to -34 (the Vaccine Act), alleging injuries from the vaccine. Appx. 16, 21, 25. Ms. DiMasi's counsel sought a decision on the papers, without submission of oral testimony. On November 7, 2019, the special master assigned to the matter denied compensation. Appx. 21–29.

The special master noted that the parties agreed on the character and existence of the post-vaccination conditions at issue, as ultimately diagnosed in 2016 and 2017: "small fiber neuropathy" and "postural tachycardia syndrome" (POTS), which are related. Appx. 27; *see also* Appx. 42, 65. He also noted that no claim of significant aggravation of a preexisting condition, *see* 42 U.S.C. § 300aa-11(c)(1)(C), had been presented. Appx. 21. After analyzing the evidence, including expert reports on both sides, the special master found that the vaccine was not the cause in fact of the conditions at issue, because her "conditions pre-dated the influenza vaccination." Appx. 21; *see also* Appx. 27–29.

Ms. DiMasi had thirty days to seek Claims Court review of the special master's ruling. 42 U.S.C. § 300aa-12(e)(1). No such review was sought, and the Claims Court entered final judgment against the claim for compensation on December 11, 2019. Appx. 30.

On September 15, 2020, within a year of the final judgment, Ms. DiMasi sent the special master a letter, with medical records and other attachments, requesting that she be allowed to proceed pro se (because of alleged significant problems with her counsel's actions) and that her case be reopened. Appx. 31–151. Her counsel promptly submitted a responsive affidavit. Appx. 153–56. The special master allowed Ms. DiMasi to proceed pro se and construed her request to reopen her case as a motion for relief from judgment under Claims Court Rule 60. Appx. 162, 181–82, 190–91. Ms. DiMasi responded to counsel's affidavit, Claims Ct. Dkt. No. 103, and the Secretary opposed the motion, Claims Ct. Dkt. No. 106. On June 3, 2021, the

special master denied Ms. DiMasi's motion, Appx. 157, but then, on her request for reconsideration, Appx. 172–76; Claims Ct. Dkt. No. 113, he vacated the denial, Claims Ct. Dkt. No. 115 (vacatur). Thereafter, the government made a supplemental filing, Claims Ct. Dkt. No. 120, and Ms. DiMasi sought leave to file additional material, Appx. 16 n.2, 182.; Claims Ct. Dkt. No. 118.

We view Ms. DiMasi's initial September 2020 filing, her response to counsel, and her request for reconsideration as collectively constituting her Rule 60 motion for relief from the December 2019 judgment. Ms. DiMasi made several contentions. Perhaps most centrally, she asserted a fundamental misunderstanding about facts regarding the precise timing of the emergence of key (neuropathy) symptoms, a misunderstanding that, she alleged, is reflected in expert submissions and infected both the special master's denial of compensation and her own counsel's submissions, including his choice not to present a significant-aggravation claim. *See*, *e.g.*, Appx. 31–32 (Sept. 2020 letter); Ex. 13 at 17–18 (expert reports); Ex. 7 at 1 (expert reports); Appx. 24, 21 (denial of compensation); Appx. 153 (counsel affidavit). She also alleged misunderstandings of certain pre-vaccination records. *See*, *e.g.*, Appx. 31; Ex. 19 at 3, 17 (quoted at Appx. 193–94); Ex. 7 at 1 (quoted at Appx. 194). Ms. DiMasi tied the misunderstandings and her counsel's submissions and choices to allegations that counsel failed to fulfill duties to communicate with her and (unless counsel withdrew) to respect her right to make certain key choices as the client in the attorney-client relationship, including some choices about what claims to raise. *See*, *e.g.*, Appx. 32, 153. In addition, she asserted deficiencies by counsel in not seeking review by the Claims Court of the compensation denial, not definitively telling her he would not do so, and not informing her of the filing deadline. *See*, *e.g.*, Appx. 32, 153.

On November 10, 2021, the special master denied Ms. DiMasi's Rule 60 motion and motion for leave to file

additional material. Appx. 178. He first addressed the additional-material motion, which he denied after elaborating legal standards for various provisions of Rule 60. Appx. 183–90, 204–09. As to the Rule 60 motion itself, the special master, relying on legal formulations set forth in the discussion of the additional-material motion, denied relief from the December 2019 judgment. Appx. 190–99. Among other conclusions, the special master rejected Ms. DiMasi's allegation of misunderstanding of evidence about when precisely neuropathy symptoms manifested themselves after the vaccination (immediately or, instead, after a few days) and the related challenge to counsel's decision to request a ruling on the record without oral testimony from Ms. DiMasi and his decision not to raise a significant-aggravation claim. Appx. 191–97. Regarding counsel's not having sought further review of the November 2019 special master's ruling, which the special master said presented "a close call," the special master recognized the deficiencies in counsel's communication with Ms. DiMasi but ultimately found that Ms. DiMasi failed to act diligently to preserve her rights. Appx. 199.

The Claims Court subsequently denied Ms. DiMasi's motion for review of the special master's November 2021 decision, finding no reversible error. Appx. 15–20. Ms. DiMasi timely appealed, still acting pro se. We have jurisdiction under 28 U.S.C. § 1295(a)(3). Under the Vaccine Act, we review a decision of the special master "under the same standard as the [Claims Court]." *Rodriguez v. Secretary of Health & Human Services*, 632 F.3d 1381, 1383–84 (Fed. Cir. 2011). We must set aside the decision if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Avera v. Secretary of Health & Human*

Services, 515 F.3d 1343, 1347 (Fed. Cir. 2008) (quoting 42 U.S.C. § 300aa-12(e)(2)(B)).

II

Ms. DiMasi's pro se filings raise issues whose resolution would significantly benefit from additional briefing (and oral argument), including from an attorney appointed by this court as an amicus to support her appeal. We here selectively identify certain issues raised in this appeal. The new briefing should address those issues. We do not confine the new briefing to those issues, to the exclusion of other issues that are pertinent to the resolution of the appeal.

The Claims Court's Rule 60(b) identifies various "grounds for relief from a final judgment, order, or proceeding." Claims Court Rule 60(b) (capitalization removed). We look to cases interpreting Rule 60(b) of the Federal Rules of Civil Procedure, which governs in district courts, in interpreting the identical Claims Court's Rule 60(b). *See Progressive Industries, Inc. v. United States*, 888 F.3d 1248, 1253 n.4 (Fed. Cir. 2018); *Information Systems & Networks Corp. v. United States*, 994 F.2d 792, 794 n.3 (Fed. Cir. 1993). We review a decision to grant or deny relief under Rule 60(b) for an abuse of discretion, including an error of law or clearly erroneous finding of fact. *Patton v. Secretary of Department of Health & Human Services*, 25 F.3d 1021, 1029 (Fed. Cir. 1994). In some circumstances, a trial court considering a Rule 60(b) motion must resolve factual disputes, and sometimes a hearing is required in order to do so. *See, e.g.*, *Sheng v. Starkey Laboratories, Inc.*, 53 F.3d 192 (8th Cir. 1995); *Michaud v. Michaud*, 932 F.2d 77 (1st Cir. 1991); *Garabedian v. Allstates Engineering Co.*, 811 F.2d 802 (3d Cir. 1987); *Montes v. Janitorial Partners, Inc.*, 859 F.3d 1079, 1084–85 (D.C. Cir. 2017); *Durukan America, LLC v. Rain Trading, Inc.*, 787 F.3d 1161, 1164 (7th Cir. 2015); *Bouret-Echeverria v. Caribbean Aviation Maintenance Corp.*, 784 F.3d 37, 46–49 (1st Cir. 2015); 11

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