

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-633V

Filed: December 27, 2012

Not to be Published

CHARLES P. VESEI

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Petitioner,

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v.

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SECRETARY OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Lisa A Roquemore, Irvine, CA, for petitioner

Chrysovalantis P. Kefalas, Washington, DC, for respondent

DECISION¹

On September 24, 2012, petitioner filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),² alleging an

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² The Program comprises 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-10 *et seq.*

influenza vaccine he received on September 14, 2009, caused him to suffer various injuries. The information in the record, however, does not show that petitioner is eligible for an award under the Program.

As petitioner's counsel explained in her motion to dismiss, the petition was filed in an effort to meet what was believed to be an impending statute of limitations deadline. In this urgent circumstance, the petition was filed based on information provided by petitioner alone, without a review of his medical records.

Upon review of petitioner's records, counsel discovered that, contrary to petitioner's representations, the claim was untimely filed. Subsequently, on December 13, 2012, petitioner moved for a decision dismissing his claim, acknowledging that the petition was not timely filed under the Vaccine Act's statute of limitations.

To receive compensation under the Program, petitioner must have filed a petition within "36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury" as required by § 300aa-16(a)(2) of the Vaccine Act.

Under the Vaccine Act petitioner has the burden to show timely filing. Petitioner has failed to do so, and concedes that this case was not filed within the statutory limitations period. **Therefore, this case is dismissed as untimely filed. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

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

(hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.