

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-189V

January 22, 2013

Not to be Published

ANNE BROOKS BRAUER,

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Petitioner,

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v.

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No records of vaccine reaction
or GBS ever filed; dismissal

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Ann Brooks Brauer, Fredericksburg, VA, for petitioner (pro se).

Lara A. Englund, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

On March 23, 2012, petitioner filed a petition pro se under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34, alleging that influenza vaccine administered on October 11, 2011 gave her pain, sweating, swelling in her legs, wrists, and knees, an emergency room visit on December 26, 2011, and Guillain-Barré syndrome (GBS). Petitioner never filed any medical records to support her allegation that she had GBS and the remainder of her medical

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access.

records reveals she has severe osteoarthritis which causes her pain, prompting her doctor to recommend a right hip replacement, and she has been diagnosed with bronchitis.

During a June 4, 2012 telephonic status conference, petitioner stated that Dr. Andrew Garvie diagnosed her with GBS in April 2012. The record of April 3, 2012 shows that Dr. Garvie diagnosed petitioner with bronchitis.

On January 11, 2013, the undersigned issued an Order to Show Cause why this case should not be dismissed by February 15, 2013.

On January 17, 2013, petitioner filed a response to the undersigned's Order to Show Cause with an attached letter to "The Surgeon General Rear Admiral Steven K. Galson" and addressed to the White House. In her response to the undersigned's Order to Show Cause, petitioner states:

Your sections titled FACTS: show how very deeply You decided to enforce Your theory of my case of osteoarthritis. Which in fact had caused me only moderate pain, until the VACCINE shot The REVERSE REACTION described by the Pharmacist of Walgreen Drug Counter – who had the record of my vaccine shot on her computer and then she dialed HUD to report my case of REVERSE REACTION and my suffering. The vaccine name and number were all given to you in my reports (filed in triplet) and the notification from HUD about the reaction to the vaccine, telling how to file for compensation. These are my actual facts backed up by records—you completely ignored or were just ignorant of the facts not reading the report. I cannot accept your negative view on all my statements that were treated in your text as “gear say,” or something I had made up. It is hard for be [sic] to believe that HUD attorney for the Government could be so immature as to pull out a few choice cases, and dismissed my opinions. I am the one who has suffered for over 13 months with stabbing pain, almost knife like in my joints, over all sickness and weakness from the Reaction each month—it is a time released vaccine—DID YOU KNOW THAT EACH MONTH I GOT THIS SUFFERING PAIN.

You have shown that the Doctors, who were lovely with me, but said each time “there is nothing we can do”—yes it was verbal—they knew anything they gave me might cause a worse reaction-- These are true facts, not made up or things “I think I heard” as you stated. The Vaccine companies know this too!!! And my records you have state showed there was NO NEUROSENSORILY. They were amazed at my general good health for my age of 83 to bear

all of this. No heart trouble, no lung problems, no high blood pressure, and you state in your text “Petitioner believes that Dr. Garvie diagnosed her with GBS” he did and we discussed the pros and cons of vaccine at hospital. He order[sic] an MRI and my Medicare records show I did have a small kidney store [sic] –and I also have an over \$6,000. Medical receipts for the past year. I don’t know who misread what on that one, but I was there and so was my daughter with me when I went into Emergency room at Mary Washington Hospital (you have on record all Hospital records and Dr. visit. – I can’t believe that you can just try to “scruff this off” as something “made up” that is not professional and I think you should be reprimanded it that was you reason. So I am sending a copy of your letter to REAR ADMIRAL STEVEN K. GALSON MD MPH SURGEON GENERAL to ask for a second opinion on your Order to Show Cause.

November 12, I woke up for the first time in 13 months and put my foot down on the floor without the “stabbing pain” going up my leg and hips. I had been told the Vaccine would wear out in a year! It didn’t and the last 2 months before it left in Nov. were horrible!!! I hardly got out of my chair—so the theory of the vaccine wearing out in a year is not true, it took me 13 months and I am still hurting, like aches (now that is like arthritis—what I experienced was not like this pain[]). I am still crippled in my right leg and using my can[e] and trying to continue to care for myself and get stronger.

Petitioner’s attachment, containing her letter to the Surgeon General, assails the vaccine companies, the government, and the Order to Show Cause (“has no depth and shows very immature judgment in my opinion”).

Even though given every opportunity to do so, petitioner has still not filed any medical record or medical opinion supporting her allegation that flu vaccine caused her GBS or any other medical problem, or that she even has or ever had GBS. This petition must be **DISMISSED** for failure to make a prima facie case.

FACTS

Petitioner was born on May 16, 1929.

On May 17, 2011, before she received her October 11, 2011 flu vaccination, she went to Fredericksburg Orthopaedic Associates, P.C., complaining of an injury in December 2010 when her large dog pulled her across the street in response to the barking of another dog. She had

significant pain. She subsequently developed walking pneumonia. She limped on her right side. P-A Heather Brown diagnosed her with severe right hip osteoarthritis, lumbar spondylosis, and right knee osteoarthritis, and gave her a prescription for Celebrex. Folder no. 4, unpaginated page.

On October 11, 2011, petitioner received influenza vaccine. Folder no. 3 at page 22.

On December 26, 2011, petitioner saw Dr. George D. Fish at Mary Washington Hospital for an x-ray of her right hip which was ordered by Dr. David M. Garth. Folder no. 4 at page 1. Petitioner had pain without trauma after having had a fall. She had lateral right hip pain. Dr. Fish diagnosed her with severe advanced osteoarthritic changes of her right hip. Id. Petitioner attributed her pain to the flu vaccination. Ex. A at 95. Petitioner's pain in her right hip began about one year previously after a fall and peaked in severity about one day before. Petitioner stated she had x-rays about six months previously and was diagnosed with a right hip fracture. The pain had been waxing and waning in severity since it began. Id. Dr. Fish interpreted an x-ray of petitioner's lumbosacral spine as showing advanced degenerative changes of the lumbar spine and both hips with particularly striking degeneration of the right hip. His impression was advanced degenerative changes but no definite acute abnormality. Id. at 103.

On the same date, December 26, 2011, Dr. Fish took an x-ray of petitioner's right knee which showed osteoarthritic changes of her knee with a sizable approximately 2.8 cm calcific loose body in the suprapatellar pouch. Folder no. 4 at page 31.

On January 18, 2012, P-A Heather Brown at Fredericksburg Orthopaedic Associates, PC noted petitioner had increased lower back and right hip pain. Petitioner had known severe osteoarthritis of her hip and lower back. The pain became so intolerable over the holidays, which were very active, that she went to the emergency room and was treated and released with medications by Dr. David Garth, and then referred back to Fredericksburg Orthopaedic Associates for further evaluation. Oral steroids provided relief for a short period of time. Petitioner used a cane and had a knee brace on her right knee. Otherwise, petitioner was neurosensorily intact, in other words, normal neurologically. X-rays showed petitioner has severe osteoarthritis of her right hip and lumbar spondylitic changes. The recommendation was that petitioner get her right hip replaced. Folder no. 4, unpaginated page.

On April 3, 2012, petitioner saw Dr. Garvie, complaining of nausea, vomiting, diarrhea, cough, and congestion. Dr. Garvie thought petitioner's heart had some cardiomegaly. She had atherosclerosis and degenerative changes in her spine. Ex. A at 59. She had no seriously abnormal test results. Dr. Garvie diagnosed petitioner with bronchitis. Id. He prescribed Robitussin A-C cough syrup. Id.

On August 12, 2012, petitioner returned to Mary Washington Hospital, complaining of left flank pain. Dr. Roni F. Talukdar examined petitioner's CT scans and concluded there was no explanation for the symptoms. Id. at 33. Her organs were normal and there was no kidney

stone. Dr. Talukdar noted that petitioner had marked degenerative change within her hips with severe osteoarthritis of her right hip. She also had multilevel degenerative disc and facet disease involving her lower lumbar spine. Id.

DISCUSSION

To satisfy her burden of proving causation in fact, petitioner must prove by preponderant evidence: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." Althen v. Sec'y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec'y of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[.]" the logical sequence being supported by "reputable medical or scientific explanation[.]" i.e., "evidence in the form of scientific studies or expert medical testimony[.]"

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. Id. at 1148.

Petitioner must show not only that but for flu vaccine, she would not have pain, but also that the vaccine was a substantial factor in causing her pain. Shyface v. Sec'y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999). Petitioner has never show that flu vaccine caused her to have GBS or that she ever had GBS.

Although petitioner alleges that flu vaccine caused her pain, sweating, swelling in her legs, wrists, and knees, and GBS, the medical records show that her longstanding osteoarthritis is the source of her pain, particularly her lumbar spine, right hip, and right knee. She had particular difficulty after her dog dragged her across the street, an incident occurring before she received flu vaccine. Her doctor recommended that she get a right hip replacement because her hip was fractured. While petitioner believes that Dr. Garvie told her in April 2012 that she has GBS, he diagnosed her with bronchitis. There is no medical record in April 2012 or on any other date in which a doctor diagnosed petitioner with GBS. There are no records showing petitioner had more than six months of sweating or swelling due to flu vaccination. The Vaccine Act requires that petitioner prove that her alleged vaccine reaction lasted more than six months. 42 U.S.C. § 300aa-11(c)(1)(D)(i). There is no proof in the medical records that she had a reaction to flu vaccination or that it lasted beyond six months.

Petitioner has reiterated throughout this proceeding that she had a vaccine reaction and that flu vaccine caused her to have GBS. The undersigned has asked repeatedly for medical

records supporting her allegations. She has not provided them. Respondent kindly obtained all petitioner's medical records from Mary Washington Hospital. They do not support petitioner's allegation that she had a vaccine reaction or that she had GBS. The Vaccine Act does not permit the undersigned to rule in favor of petitioner based solely on her allegations unsupported by medical records or credible medical opinion. 42 U.S.C. § 300aa-13(a)(1). Petitioner has not filed medical records or credible medical expert opinion to substantiate her allegations.

Petitioner's medical records show that she has longstanding osteoarthritis which predates her flu vaccination. She had an unfortunate incident in December 2010 of her large dog dragging her across the street in response to another dog barking, thereby hurting her right hip. Her fractured right hip and her osteoarthritic right knee containing a calcific loose body continued to cause her pain, prompting Dr. George Fish to recommend that she get her hip replaced. Petitioner attributed her right hip pain to the flu vaccination she received two and one-half months earlier, but Dr. Fish noted that her right hip pain actually began one year earlier. Six months after flu vaccination, she had bronchitis. Ten months after flu vaccination, she had unexplained flank pain. Nothing in these records substantiates petitioner's allegations of a vaccine reaction.

Petitioner has failed to make a prima facie case of causation in fact, and this petition is hereby **DISMISSED**.

CONCLUSION

Petitioner's petition is **DISMISSED**. 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.²

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.