

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

GERALDINE F. HUGHES, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN SERVICES, *

Respondent. *

No. 10-409V
Special Master Christian J. Moran

Filed: October 3, 2012

Decision on the record; influenza vaccine; Guillain-Barre syndrome; insufficient proof.

Diana L. Stadelnikas, Maglio Christopher and Toale, Sarasota, FL, for petitioner;
Jennifer L. Reynaud, United States Dep’t of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Geraldine Hughes filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., on June 30, 2010. Her petition alleged that she had an adverse reaction, including Guillain-Barre syndrome (“GBS”), resulting from the receipt of the influenza vaccine administered to her on September 3, 2009. The information in the record, however, does not show entitlement to an award under the Program.

I. Procedural History

Ms. Hughes filed her medical records, as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A), on August 26, 2010. An initial status conference was then held on September 20, 2010, during which Ms. Hughes was ordered to file her affidavit and any outstanding records. Ms. Hughes did file additional records on November 5, 2011 and she filed her affidavit, along with a statement of completion, on February 9, 2011.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this ruling on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

After a review of the records by medical personnel at the Division of Vaccine Injury Compensation, respondent determined that several records remained outstanding. She requested that Ms. Hughes file these records prior to submission of the Rule 4 report.

On June 27, 2011, Ms. Hughes filed updated medical records from her primary care physician. She also filed a status report advising that the parties had entered into settlement discussions. However, on October 14, 2011, respondent filed a status report indicating that settlement discussions had been unsuccessful, and requesting that she file her Rule 4 report in 45 days.

Respondent filed her Rule 4 report on November 28, 2011. In this report, respondent stated that Ms. Hughes has not shown that she suffered from GBS, or that she suffered the residual effects of her injury for more than six months. Accordingly, respondent recommended that Ms. Hughes's claim for compensation be denied. Resp't Rep't at 10, 12.

A status conference was held on December 8, 2011. During this conference, Ms. Hughes was ordered to file an expert report supporting her claim that the influenza vaccine caused her to suffer GBS. Ms. Hughes filed four motions for an extension of time to file this report. After she filed her fourth motion, a status conference was held to discuss her progress in obtaining this report. Following this conference, Ms. Hughes's motion was granted and she was ordered to file her expert report by September 28, 2012.

On September 28, 2012, Ms. Hughes filed a motion for a decision on the record. In support of her motion, Ms. Hughes stated that "further investigation of the facts and science supporting her case has demonstrated to Petitioner that it is not likely she will be able to prove vaccine causation of the injury alleged to the preponderance standard required by the Vaccine Act in this case and therefore unable to prove [she] is entitled to compensation in the Vaccine Program." Ms. Hughes stated that to proceed further with her case would be "unreasonable, and would waste the resources of the Court, the Respondent, and the Vaccine Program." Pet'r Mot. at 1.

Respondent filed a response on October 2, 2012. Respondent maintained her position outlined in her Rule 4 report that Ms. Hughes's claim for compensation should be dismissed. Resp't Response at 1. Accordingly, this case is now ready for adjudication.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), Ms. Hughes must prove either 1) that she suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to her vaccination, or 2) that she suffered an injury that was actually caused by a vaccine.

See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Ms. Hughes suffered a “Table Injury.” Thus, she is necessarily pursuing a causation-in-fact claim.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records do not support Ms. Hughes’s claim, a medical opinion must be offered in support. Ms. Hughes, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that Ms. Hughes has failed to demonstrate either that she suffered a “Table Injury” or that her injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/Christian J. Moran
Christian J. Moran
Special Master