

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-370V

Filed: November 30, 2012

John and Sarah Bout,
parents of Kallista Bout, a minor,

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UNPUBLISHED

Petitioners,

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Petitioners’ Motion for a
Decision Dismissing the Insufficient
Petition; Proof of Causation; Vaccine
Act Entitlement; Denial Without Hearing

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

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Respondent.

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Jeffrey Golvash, Pittsburgh, PA, for petitioners.

Lara Ann Englund, Washington, DC, for respondent.

DECISION¹

On June 10, 2011, petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),² alleging that various

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends 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)). 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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 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.*

vaccinations injured Kallista. The information in the record, however, does not show entitlement to an award under the Program.

On November 26, 2012, petitioners moved for a decision on the merits of the petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

To receive compensation under the Program, petitioners must prove either 1) that Kallista suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Kallista’s vaccinations, or 2) that Kallista 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 Kallista suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Kallista’s alleged injury was vaccine-caused.

Under the Act, petitioners may not be given a Program award based solely on the petitioners’ 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 there are insufficient medical records supporting petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Kallista suffered a “Table Injury” or that Kallista’s injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. 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.