

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 10-634V

(E-Filed: March 13, 2012)

NANCY D’ADDIO, on behalf of the late)	
EDWARD D’ADDIO,)	UNPUBLISHED
)	
Petitioner,)	Petitioner’s Motion for a
)	Decision Dismissing her
v.)	Claim; Insufficient
)	Proof of Causation;
SECRETARY OF THE DEPARTMENT)	Denial of Entitlement
OF HEALTH AND HUMAN SERVICES,)	Without a Hearing
)	
Respondent.)	
)	

Patricia Finn, The Law Office of Patricia Finn, Piermont, NY, for petitioner.

Linda Renzi, U.S. Department of Justice, Washington, DC, for respondent.

DECISION¹

On September 20, 2010, petitioner filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),² alleging that her

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post this decision on the United States Court of Federal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)). In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information, that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, the undersigned agrees that the identified material fits within the requirements of that provision, such material will be deleted 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.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

late husband, Edward, was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14. The information contained in the record does not establish entitlement to an award under the Program, and on March 12, 2012, petitioner moved for a decision on the merits of the petition, acknowledging that insufficient evidence exists to support this claim.

To receive compensation under the Program, petitioner must prove either 1) that Edward suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Edward’s vaccinations, or 2) that Edward suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A) and 11(c)(1). Examination of the record does not disclose any evidence that Edward suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Edward’s alleged injury was vaccine-caused.

Under the Vaccine Act, a petitioner may not be awarded compensation based on the petitioner’s claims alone. Rather, the petition must be supported by either the medical records or by a medical opinion. § 13 (a)(1). In this case, the record does not contain medical records or a medical opinion sufficient to demonstrate that the vaccinee was injured by a vaccine. For these reasons, and in accordance with § 12(d)(3)(A), the **petitioner’s claim for compensation is denied and this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.** ³

Petitioner also has filed an unopposed motion for an award of attorneys’ fees and costs in this case. Petitioner is entitled to reasonable attorneys’ fees and costs pursuant to §§ 15(b) and (e)(1). Petitioner seeks attorneys’ fees and costs in the amount of \$8,845.00. In lieu of filing a Vaccine General Order 9 statement, petitioner’s counsel agrees to reimburse petitioner any costs that petitioner personally incurred that are compensable under § 15 (e)(1). Respondent has reviewed the motion and does not object.

Because the undersigned finds that the petition was brought in good faith and upon a reasonable basis, and the amounts requested are reasonable and appropriate, the requested attorneys’ fees are **GRANTED** pursuant to §§ 15(b) and (e)(1).

³ This document constitutes the undersigned’s final “Decision” in this case, pursuant to § 12(d)(3)(A). If petitioner wishes to have this case reviewed by a Judge of the United States Court of Federal Claims, a motion for review of this decision must be filed within 30 days. After 30 days the Clerk of this Court shall enter judgment in accord with this decision. If petitioner wishes to preserve whatever right petitioner may have to file a civil suit (that is a law suit in another court) petitioner must file an “election to reject judgment in this case and file a civil action” within 90 days of the filing of the judgment. § 21(a).

Pursuant to §15(e), the undersigned awards a lump sum of \$8,845.00⁴ to be paid in the form of a check payable jointly to the petitioners and petitioners' counsel, Patricia Finn.

In the absence of a timely-filed motion for review filed pursuant to Appendix B of the Rules of the U.S. Court of Federal Claims, the clerk of the court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

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

⁴ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, “advanced costs” as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally Beck v. Sec’y of Dep’t Health and Human Services, 924 F.2d 1029 (Fed. Cir.1991).

⁵ Entry of judgment can be expedited by each party’s filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).