

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 02-874V

Filed: July 26, 2011

**BRODERICK A. LEONARD, and
TAMARA TOLBERT, parents and personal
representatives of BRODERICK TYREN
LEONARD, a minor,**

Petitioners,

v.

**SECRETARY OF HEALTH AND HUMAN
SERVICES**

Respondent.

UNPUBLISHED DECISION

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

M. Clay Alspaugh, Birmingham, AL, for petitioners.

Linda Renzi, Washington, DC, for respondent.

DECISION¹

On July 22, 2002, petitioners filed a Petition For Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”).² The information in

¹ The undersigned intends to post this 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). As provided by Vaccine Rule 18(b), each party has 14 days within which to file a motion for redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). In the absence of such motion, “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*

the record, however, does not show entitlement to an award under the Program.

On April 25, 2011, petitioners filed a Motion for Ruling on the Record. Petitioners failed to provide pinpoint cites to the record in support of their Motion. Accordingly, the undersigned issued an order dated April 26, 2011, deferring a ruling until petitioners amended their motion with pinpoint cites. See April 26, 2011 Order. Petitioners' counsel refiled the motion on June 1, 2011, again failing to provide pinpoint cites. See petitioners' filing of June 1, 2011.

In response to the refiled motion without the requested pinpoint cites, the undersigned conducted a status conference with the parties' counsel. During the status conference, petitioners' counsel made an oral motion to convert the motion for ruling on the record to a motion for dismissal of the petition. Petitioners' counsel stated that under the current applicable law, he would be unable to demonstrate Program compensation in the Program. The undersigned granted counsel's request and agreed to promptly address petitioners' motion.

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

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). Because the offered medical records cannot alone support petitioners' claim, a medical opinion must also be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioner have failed to demonstrate either that Broderick suffered a "Table Injury" or that Broderick's injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**³

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

³ The undersigned notes that if petitioner elects to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law petitioner will need to first establish proof of vaccination and the timely filing of her Petition for Vaccine Compensation, see § 300aa-16(a)(2) and 16(b), prior to any award for attorneys' fees and

IT IS SO ORDERED.

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

costs being granted. See Brice v. Secretary of Health and Human Services, 358 F.3d 865, 869 (2004), citing Martin v. Secretary of Health and Human Services, 62 F.3d 1403, 1406 (1995).