

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-51V

Filed: July 28, 2011

Reissued for Redaction: August 17, 2011¹

LAURA OROZCO-CORDERO, Parent of
K. C., a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES

Respondent.

UNPUBLISHED DECISION

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

DECISION²

On January 16, 2004, Petitioner filed a Short-Form Autism Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program").³ In effect, by use of the special "Short-Form" developed for use in the context of the Omnibus Autism Proceeding, the petition alleges that various vaccinations injured K.C. The information in the record, however, does not show entitlement to an award under the Program.

¹ On August 11, 2011, petitioner's counsel filed a motion to redact the minor child's name to reflect only the minor child's initials. Petitioner's request is GRANTED.

² When this decision was originally issued, the parties were notified that the decision would be posted in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). The parties were also notified that they may seek redaction pursuant to 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b). Petitioners made a timely request for redaction and this decision is being reissued with the name of the minor child redacted to initials.

³ 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.

On July 27, 2011, the Petitioner 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, Petitioner must prove either 1) that K.C. suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of K.C.’s vaccinations, or 2) that K.C. 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 K.C. suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that K.C.’s alleged injury was vaccine-caused.

Under the Vaccine Act, 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, 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.** ⁴

IT IS SO ORDERED.

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

⁴ If Petitioner elects to file a Petition for Fees and Costs pursuant to §15(e), based on current case law Petitioner will need to first establish proof of vaccination and the timely filing of their Petition for Vaccine Compensation, see §§ 16(a)(2) and 16(b), prior to any award for attorneys’ fees and 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).