In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 02-1470V
Filed: June 14, 2011

JOHN SPORTELLI-WRIGHT and LISA SPORTELLI-WRIGHT, Parents of EAN SPORTELLI-WRIGHT, a Minor, **Petitioners,** **v.** **SECRETARY OF HEALTH AND HUMAN SERVICES** **Respondent.**	UNPUBLISHED DECISION Petitioners' Motion for a Decision Dismissing their Petition; Insufficient Proof of Causation; Vaccine Act Entitlement; Denial Without a Hearing

DECISION[1]

On October 28, 2002, Petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program"),[2] alleging that Ean was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14. The information in the record does not show entitlement to an award under the Program.

[1] Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post this decision on the United States Court of Federal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.

On June 14, 2011, the 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 Ean suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Ean's vaccinations, or 2) that Ean 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 Ean suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Ean's alleged injury was vaccine-caused.

Under the Vaccine Act, Petitioners may not be awarded compensation based on the petitioners' 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 **petitioners' claim for compensation is denied and this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.** [3]

IT IS SO ORDERED.

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

[3] If petitioners elect to file a Petition for Fees and Costs pursuant to §15(e), based on current case law petitioners 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).