

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-754V

Filed: May 19, 2011

Not To Be Published

TERRESA YORK and BENJAMIN YORK, *
on behalf of NASHOBA LEE YORK, *
a minor, *

Petitioners, *

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

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES *

Respondent, *

DECISION¹

On April 29, 2004, petitioners filed a Petition For Vaccine Compensation in the National Vaccine Injury Compensation Program("the Program").² The Petition alleges that various vaccinations injured Nashoba. The information in the record, however, does not show entitlement to an award under the Program.

On May 19, 2011, petitioners made an oral Motion for a Decision dismissing their Petition. Petitioners asserted in their Motion that under the current applicable law they will be unable to demonstrate entitlement to compensation in the Program. Accordingly, petitioners request that the undersigned dismiss the above-captioned Petition. Id.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post this decision on the United States Court of Federal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

²The 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.

To receive compensation under the Program, petitioners must prove either 1) that Nashoba suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Nashoba 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 Nashoba suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Nashoba’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). In this case, because there are no 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 Nashoba suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof.**³ **The Clerk shall enter judgment accordingly.**⁴

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Chief Special Master

³ The undersigned notes that if petitioners elect to file a Petition for Fees and Costs pursuant to § 300aa-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 § 300aa-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).

⁴ This document constitutes my final “Decision” in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). If petitioners wish 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 petitioners wish to preserve whatever right petitioners may have to file a civil suit (that is a law suit in another court) petitioners must file an “election to reject judgment in this case and file a civil action” within 90 days of the filing of the judgment. 42 U.S.C. § 300aa-21(a).