In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(E-Filed: June 19, 2008)

_____

)
MARIANNE FRASCHILLA,   )   UNPUBLISHED
)
            Petitioner,   )   No. 99-590V
)
v.   )   Motion For Judgment on
)   the Record
SECRETARY OF THE DEPARTMENT OF   )
HEALTH AND HUMAN SERVICES,   )
)
            Respondent.   )
_____)

Clifford Shoemaker, Vienna, VA, for petitioner.

Alexis Babcock, Washington, DC, for respondent.

DECISION[1]

On August 4, 1999, petitioner, Marianne Fraschilla, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (the Vaccine Program).[2] Petitioner alleges that the hepatitis B vaccinations that she received on May

---

[1] Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless an issued decision contains trade secrets or commercial or financial information that is privileged or confidential, or the decision contains medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. When a special master files a decision or substantive order with the Clerk of the Court, each party has 14 days within which to identify and move for the redaction of privileged or confidential information before the document's public disclosure.

[2] The National Vaccine Injury Compensation Program is set forth in 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.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

22, 1992, June 19, 1992, and November 20, 1992, resulted in what petitioner described in her affidavit filed on September 5, 2006, as "vision problems, gait problems, and weakness and numbness to my arms and legs." Petitioner's affidavit at 2. The filed records, however, do not support a finding of entitlement to an award under the Vaccine Program.

To receive compensation under the Vaccine Program, a petitioner must prove either: (1) that she suffered, after receiving the vaccinations in question, an identified injury on the Vaccine Injury Table that occurred within the prescribed time period, referred to as a "Table" injury, or (2) that she suffered medical problems that were caused by the administered vaccinations, referred to as an "off-Table" injury. See 42 U.S.C. § 300aa-13(a)(1)(A) and § 300aa-11(c)(1). Petitioner bears the burden of establishing, by a preponderance of the evidence, that she is entitlement to compensation.   42 U.S.C. § 300aa-13(a)(1)(A).

A careful review of the filed records has not produced any evidence that petitioner suffered a "Table Injury." Nor do the filed records contain a medical expert's opinion indicating that any of petitioner's alleged health problems were vaccine-caused.

The Vaccine Act prohibits a Program award to a petitioner based solely on unsubstantiated petitioner's claims. 42 U.S.C. § 300aa-13(a)(1). The Act requires that the petition must be supported by the medical records or by the opinion of a competent physician. Id. Because the filed medical records do not provide support for petitioner's claim, a medical opinion supporting petitioner's claim must be offered. Petitioner, however, has not offered a medical opinion.

By motion filed March 31, 2008, petitioner's counsel requested a ruling upon the record as it stands. Petitioner's counsel acknowledges that no expert opinion in support of petitioner's claim of causation has been filed in this case.

Absent evidence in the filed records that petitioner's injury was caused by the received vaccination, and without an opinion of causation offered by a competent physician, petitioner has failed to satisfy her burden under the Act entitling her to Program compensation. Accordingly, petitioner's motion for judgment on the record is **GRANTED**, and petitioner's claim for compensation under the Vaccine Program is **DENIED**.

        IT IS SO ORDERED.

_____

<u>s/Patricia E. Campbell-Smith</u>
Patricia E. Campbell-Smith
Special Master