

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(E-Filed: May 25, 2007)

No. 99-207V

_____)	
PHYLLIS NOE,)	UNPUBLISHED
)	
Petitioner,)	Motion for Judgment on the
)	Record; No offered medical
v.)	theory or expert opinion causally
)	connecting the vaccination and the
SECRETARY OF THE DEPARTMENT OF)	alleged injury
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	
_____)	

Clifford J. Shoemaker, Vienna, VA, for petitioner.

Robin L. Brodrick, with whom were Peter D. Keisler, Assistant Attorney General, Timothy P. Garren, Director, Mark W. Rogers, Deputy Director, and Catharine E. Reeves, Assistant Director, United States Department of Justice, Torts Branch, Civil Division, Washington, DC, for respondent.

DECISION¹

On April 7, 1999, Phyllis Noe (petitioner or Ms. Noe) filed a petition pursuant to the

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.

National Vaccine Injury Compensation Program² (the Act or the Program), 42 U.S.C. § 300aa-10 et seq. Petitioner alleges that she “experienced adverse reactions” to the hepatitis B vaccinations that she received “[o]n or about September of 1997, October of 1997 and December 15, 1997.” Petition (Pet.) at ¶ 3. The petition states that “[a] fact specific description of the claimed symptoms and the nature and extent of the injuries caused by the inoculation[s] and the condition of the Petitioner at all relevant times will be set forth in affidavits which will be filed and [will be] set forth in the medical records . . . when filed . . .” Id. ¶ 4.

On December 7, 2001, petitioner filed medical records, which were marked as Exhibits 1-5. Petitioner’s Exhibits (P’s Exs.) 1-5. On May 2, 2002, petitioner filed Exhibits 6-9, which included petitioner’s affidavit and several witness statements. P’s Exs. 6-9. On August 20, 2004, petitioner filed, as Exhibits 10-17, additional medical records and four statements of record unavailability. P’s Exs. 10-17. On June 29, 2006, petitioner filed, as Exhibit 18, updated medical records on a compact disc. P’s Ex. 18. Based on a status report filed with the court on July 14, 2006, petitioner indicated that based on discussions with her counsel, she was considering “whether to send her records to an expert for review” or whether to seek a dismissal of her claim. Petitioner’s Status Report of 7/14/06. On March 16, 2007, petitioner filed a Motion for Judgment on the Record (P’s MJR) “as it stands. . . [because] she cannot find an expert to support causation in her case.” P’s MJR at 1.

On March 29, 2007, respondent filed a Rule 4(c) Report and Response to Petitioner’s Motion for Judgment on the Record (R’s Resp.). Respondent asserted that petitioner “is not entitled to compensation under the Vaccine Act because she has failed to establish a prima facie case of vaccine causation.” R’s Resp. at 1. Respondent stated that petitioner’s medical records establish that petitioner had “multiple symptoms that pre-existed any of her hepatitis B vaccinations,” including pain in her neck, chest, and back, tingling in her left hand and cheeks, and dizziness. See R’s Resp. at 2; P’s Ex. 2 at 3-6 (complaints of dizziness, radiant pain in left hand and cheeks and body pain), id. at 21 (complaints of weakness and pain in chest and back); P’s Ex. 3 at 6 (complaint of neck pain). Respondent added that petitioner complained of tiredness, dizziness, lightheadedness and generalized muscle spasms after receiving her hepatitis B vaccination series. See P’s Ex. 1 at 29 (complaint of generalized muscle spasms); P’s Ex. 2 at 30

² Hereinafter, for ease of reference, all “section” references to the Vaccine Injury Compensation Act will be to the pertinent subdivision of 42 U.S.C. § 300aa (2006 ed.).

(complaint of two near “syncope” episodes)³; P’s Ex. 4 at 16 (complaints of dizziness and lightheadedness); P’s Ex 6 at 1 (alleging tiredness in her affidavit). Respondent argues that without medical records or a medical opinion indicating a causal connection between petitioner’s vaccination and her alleged injury, petitioner has failed to support her claim as required by law. R’s Resp. at 4.

Petitioner’s motion for judgment on the record is now ripe for decision.

I. **DISCUSSION**

A. The Factual Record

Petitioner was on December 15, 1967. Ps’ Ex. 1 at 1. The filed medical records indicate that in June of 1992, nearly five years before petitioner received her hepatitis B vaccination series, petitioner sought treatment, on an emergent basis, for dizziness, radiant pain in her left hand and in her cheeks, and “multiple pains to [her] body.” P’s Ex. 2 at 3, 5. Petitioner’s medical records further indicate that on August 19, 1996, she again sought medical treatment, on an emergent basis, for complaints of weakness and pain in her chest and in her back. P’s Ex. 2 at 21.

Subsequently, petitioner received a series of three hepatitis B vaccinations while working as an x-ray technician at a hospital. See P’s Ex. 4 at 1; P’s Ex 5 at 3. She received her first dose of hepatitis B vaccination in July of 1997 and complained of feeling “very tired” for two to three days after the shot. P’s Ex. 5 at 3. Approximately six weeks later, she received her second dose of hepatitis B vaccination and claimed that she had symptoms of not feeling well after the second shot that were similar to her symptoms after the first shot. See id. On December 15, 1997, she received her third dose of hepatitis B vaccination and reported that she experienced similar symptoms to those she had experienced after the first two shots. Id. After the third shot, she claimed that she also experienced dizziness and the shaking of her extremities. Id.

Petitioner’s current condition is not clear from the filed records. Nor is the nature and scope of petitioner’s claimed injury entirely clear in the filed records.

B. Legal Standard and Analysis

The Vaccine Act permits a petitioner to prove entitlement to compensation by

³ Syncope is “a temporary suspension of consciousness” or a fainting episode. Dorland’s Illustrated Medical Dictionary, 1807 (30th ed. 2003).

showing that either: (1) the vaccinee suffered an injury listed on the Vaccine Injury Table within the prescribed time period, commonly referred to as a “Table” case, see § 300aa-14(a); or (2) the vaccinee suffered an injury that is not listed on the Vaccine Injury Table but is caused in fact by the received vaccination, commonly referred to as an “off-Table” case, see § 300aa-11(c)(1)(C)(ii)(I). By either method, the petitioner bears the burden of proving her claim by a preponderance of the evidence. § 300aa-13(a)(1).

In a “Table” case, the petitioner benefits from a presumption of causation. See § 300aa-14(a); 42 C.F.R. § 100.3(a). The record in this case does not support a finding that a Table injury occurred.

Accordingly, to establish entitlement to Program compensation, Ms. Noe must prove, by a preponderance of the evidence, her “off-Table” claim that the hepatitis B vaccination series that she received caused her injury. Petitioner satisfies her burden of proof “by providing: (1) a medical theory causally connecting [her] vaccination and [her] injury; (2) a logical sequence of cause and effect showing that [her] vaccination was the reason for [her] injury; and (3) a showing of a proximate temporal relationship between [her] vaccination and injury.” Althen v. Sec’y of Dept. of Health and Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005).

In this case, petitioner has failed to supply any evidence of a causal connection between her vaccination and her alleged injury. Ms. Noe’s medical records do not establish any relationship between her vaccinations and her condition. Nor has she provided an expert opinion offering a medical theory causally connecting her vaccination to her condition, the nature and scope of which remains unspecified. Instead, petitioner has conceded that she is unable to “find an expert to support [her claim of] causation.” P’s MJR at 1.

The Vaccine Act prohibits a special master from making a finding of entitlement to compensation based on the claims of petitioners alone, without substantiation by medical records or by a medical opinion. See § 300aa-13(a)(1). In this case, petitioners claim is not substantiated by either the filed medical records or an offered medical opinion. Under the Vaccine Act, petitioners’ claim must fail.

II. CONCLUSION

The medical records in this case do not establish a causal connection between petitioner’s hepatitis B vaccination series and her alleged injury. Petitioner has offered no medical opinion causally connecting her vaccinations and her condition. Because petitioner has failed to establish entitlement to compensation under the Vaccine Act, her claim is

DISMISSED. The Clerk of the Court shall **ENTER JUDGMENT** accordingly.⁴

IT IS SO ORDERED.

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

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.