

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**  
(E-Filed: May 2, 2007)

CHRISTINE E. CHERPAK,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 99-586V
	)	<b>UNPUBLISHED</b>
SECRETARY OF THE	)	Dismissal for Failure to Prosecute
DEPARTMENT OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

Clifford Shoemaker, Vienna, VA, for petitioner.

Althea W. Davis, with whom were Peter D. Keisler, Assistant Attorney General, Timothy P. Garren, Director, Vincent J. Matanoski, Acting Deputy Director, and Gabrielle M. Fielding, Assistant Director, Department of Justice, Civil Division, Torts Branch, Washington, DC, for respondent.

**ORDER DISMISSING PETITION FOR FAILURE TO PROSECUTE**<sup>1</sup>

On August 4, 1999, Lee Ann Cherpak filed a claim for compensation pursuant to the National Vaccine Injury Compensation Program<sup>2</sup> (the Act or the Program) on behalf

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<sup>1</sup> 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.

<sup>2</sup> 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

of her minor child, Christine E. Cherpak.<sup>3</sup> By notice of reassignment dated February 8, 2006, the Chief Special Master reassigned Ms. Cherpak's petition to the undersigned for consideration.

In accordance with the court's Order of February 16, 2007, petitioner's counsel filed Petitioner's Status Report (P's SR) on March 9, 2007. The status report stated that counsel "has spoken to Petitioner and she has decided to no longer pursue her claim." P's SR at 1. Counsel stated that he was "waiting to receive from the Petitioner a signed statement giving us permission to dismiss her claim and file a Motion for Judgment on the Record." Id.

Having failed to receive a motion for judgment on the record from petitioner, the court issued an Order (Order) on April 11, 2007, directing petitioner's counsel to file the anticipated motion for judgment on the record on or before April 30, 2007. Order at 1. The Order cautioned that failure to file the motion would result in the dismissal of petitioner's claim. Id. (stating "[o]n or before Monday, April 30, 2007, petitioner's counsel shall file a motion for judgment on the record or petitioner's action shall be dismissed for failure to prosecute.") (emphasis deleted).

On April 30, 2007, petitioner's counsel filed another Status Report (P's 2d SR) which stated that:

[c]ounsel has sent a form to Petitioner for her to sign giving counsel permission to move for a judgment on the record. To date, the signed form has not been received back. Numerous efforts have been made to contact petitioner about this to no avail. At this point, counsel has nothing further to offer in response to the Order of April 11, 2007.

P's 2d SR at 1.

To date, because Ms. Cherpak has not returned the signed permission form, her counsel is unable to comply with the April 30, 2007 Order of the court. Accordingly, this petition is **DISMISSED** for failure to prosecute. The Clerk of the Court shall **ENTER**

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amended, 42 U.S.C. §§ 300aa-10 to -34 (2000 & Supp. II 2003) (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.

<sup>3</sup> On April 24, 2006, Christine Cherpak moved to amend the case caption. On April 26, 2006, the special master granted her Motion to Amend Caption. Christine E. Cherpak is currently the sole petitioner in this case because she is no longer a minor.

**JUDGMENT** accordingly.<sup>4</sup>

**IT IS SO ORDERED.**

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

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