

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

No. 12-691V

Filed: September 18, 2013

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STEPHANIE HINTON, As the Parent  
And Natural Guardian of  
JEFFEREY O'BRIEN

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No. 12-691V  
  
Special Master Dorsey  
  
Petitioner's Motion for Dismissal Decision  
Dismissing the Petition; Insufficient Proof  
of Causation; Vaccine Act Entitlement;  
Denial Without a Hearing

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Mark T. Sadaka, Englewood, NJ, for Petitioner  
Darryl R. Wishard, United States Department of Justice, Washington, DC, for Respondent.

**DECISION**<sup>1</sup>

On October 15, 2012, Stephanie Hinton, as the parent and natural guardian of Jeffrey O'Brien ("Petitioner"), filed a petition pursuant to the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 et seq. (2006) ("Vaccine Act"). Petitioner alleged that an influenza vaccine, which Jeffrey received on October 22, 2009, caused him to suffer from lesions, rashes, swelling and symptoms of lupus erythematosus. Petition at 3-4, 7-8.

On August 16, 2013, petitioner filed a motion for a decision dismissing her petition, stating that she would likely be unable to prove that Jeffrey is entitled to compensation.

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post this decision on the United States Court of Federal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

Petitioner's Motion to Dismiss ("Pet'r Mot.") at 4. Accordingly, petitioner requested that the undersigned dismiss her complaint. Id.

To receive compensation under the Vaccine Act, petitioner must prove either 1) that he suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table -- corresponding to one of his vaccinations, or 2) that he 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 Jefferey suffered a "Table Injury." Furthermore, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Jefferey's injuries were caused by a vaccination.

Under the Vaccine Act, a petitioner may not be awarded compensation based solely on the petitioner's claim 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 the medical records are insufficient to establish entitlement to compensation, a medical opinion must be offered in support of petitioner's claims. Petitioner, however, has not submitted such an opinion.

Therefore, the only alternative remains to **DENY** this petition. **Thus, this case is dismissed for insufficient proof. In the absence of a motion for review, the Clerk is directed to enter judgment accordingly.**

**IT IS SO ORDERED.**

/s/ Nora Beth Dorsey  
Nora Beth Dorsey  
Special Master