In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 08-0049V
Filed: September 21, 2012

MELISSA BUTLER, on behalf of her son, NATHAN WESLEY BUTLER,	*	
Petitioner,	*	Autism, Statute of Limitations;
v.	*	Untimely Filed
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	

DECISION[1]

On January 18, 2008, Melissa Butler ("petitioner") filed a Complaint (hereafter referred to as "Petition") for Vaccine Compensation under the National Childhood Vaccine Injury Act[2] ("Vaccine Act" or the "Act") on behalf of her son, Nathan Wesley Butler ("Nathan"). In the Petition, she alleges that Nathan developed autism as a result of receiving vaccinations containing thimerasol.[3] Petition at 1.

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[1] Because this 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 42 U.S.C. § 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, the undersigned will delete such material from public access.

[2] The National Vaccine Injury Compensation 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.A. §§ 300aa-10 et. seq. (2006). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

[3] Accordingly, proceedings in this claim were deferred into the Omnibus Autism Proceedings ("OAP").

Petitioner has the burden to demonstrate that her case was properly and timely filed under the Vaccine Act's statute of limitations. § 16(a)(2). Based on the undersigned's analysis of the evidence, petitioner has not met her burden, and thus **this case is dismissed as untimely filed.**

I. Procedural History

After reviewing the Petition, it appeared that the claim may have been untimely filed. *See* Order filed February 4, 2008. *See also* § 16(a)(2) (for information regarding the Vaccine Act's statute of limitations). Therefore, petitioner was ordered to file a Statement Regarding Onset which "shall clearly state when, in the petitioner's view, the first symptom or manifestation of onset or of significant aggravation of the vaccinee's injury occurred." Order filed February 4, 2008 at 3.[4] Petitioner also was ordered to file all medical records required under Section 11(c)(2) if she believed the case was timely filed. *Id.*

Petitioner filed some medical records on June 28, 2011 but failed to file a Statement Regarding Onset. Still, the undersigned ordered respondent to file a Statement Regarding whether the Claim should proceed in the Omnibus Autism Proceeding ("OAP").[5]

On December 5, 2011, respondent filed her statement, asserting that "[a]s the record now stands, petitioner has failed to establish that this claim was filed within the Vaccine Act's statute of limitations." Respondent's Statement Regarding Timeliness and Appropriateness of proceeding within the OAP ("Resp. Statement") at 3. The undersigned deferred any action on the issue of timeliness of this case pending the

[4] The February 4, 2008 Order also directed respondent to file a Statement Regarding whether the Claim should proceed in the OAP after petitioner completed her filings.

[5] The Petitioners' Steering Committee ("PSC"), an organization formed by attorneys representing petitioners in the OAP, litigated six test cases presenting two different theories on the causation of Autism Spectrum Disorder (" ASD"). Decisions in each of the three test cases pertaining to the PSC's first theory rejected the petitioners' causation theories. *Cedillo* v. *Sec'y of Health & Human Servs.*, No. 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009), *aff'd*, 89 Fed. Cl. 158 (2009), *aff'd*, 617 F.3d 1328 (Fed. Cir. 2010); *Hazlehurst v. Sec'y of Health & Human Servs.*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009), *aff'd*, 88 Fed. Cl. 473 (2009), *aff'd*, 604 F.3d 1343 (Fed. Cir. 2010); *Snyder v. Sec'y of Health & Human Servs.*, No. 01-162V, 2009 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009), *aff'd*, 88 Fed. Cl. 706 (2009).[5] Decisions in each of the three "test cases" pertaining to the PSC's second theory also rejected the petitioners' causation theories, and petitioners in each of the three cases chose not to appeal. *Dwyer v. Sec'y of Health & Human Servs.*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010), 2010 WL 892250; *King v. Sec'y of Health & Human Servs.*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010); *Mead v. Sec'y of Health & Human Servs.,* No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

Federal Circuit's en banc decision in *Cloer v. Secretary of Health & Human Services,* 654 F.3d. 1322 (Fed. Cir. 2011).

Subsequent to the Federal Circuit's Decision in *Cloer,* the undersigned ordered petitioner to show cause why this claim should not be dismissed as untimely filed. Order to Show Cause filed July 18, 2012. Petitioner has failed to respond to that Order.

II. Facts.

Nathan was born on August 16, 2002. Petitioner's Exhibit ("Pet. Ex.") 1 at 1. Although the medical records filed show only medical care and evaluations from 2007 – 2011 with the majority dated 2010 – 2011, medical histories sent to Dr. William E. Wear in December 2010 do indicate that Nathan was born at 40 weeks after an uncomplicated pregnancy.[6] *Id.* at 15, 21. Nathan received a series of vaccinations between August 17, 2002 and May 14, 2007.[7] *Id.* at 2.

The medical records filed indicate that Nathan was diagnosed with Autism Spectrum Disorder ("ASD") at least by October 18, 2007. *See id.* at 53. According to the medical history provided to Dr. Wear by Dr. Emily R. Freilich at the Children's National Medical Center in late 2010, Nathan's "parents became concerned with his communication skills when he was about 2." *Id.* at 21. Nathan's two year old birthday would have been on August 16, 2004. Dr. Freilich added that Nathan "developed a few words but never started putting words together." *Id.*

III. Diagnostic Criteria for Autism Spectrum Disorders.

No evidence concerning the diagnostic criteria for autism spectrum disorders was filed by the parties in this case. Accordingly, I have relied upon the information contained in this section which is primarily drawn from OAP test case testimony[8] provided by three pediatric neurologists with considerable experience in diagnosing ASD.

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[6] In the medical history provided to Dr. Wear by Dr. Emily R. Freilich, she does note that Nathan was born by "C-section" and "did have some concerns with need for oxygen" but "had no other complications" and an Apgars score of 9. Pet. Ex. 1 at 21.

[7] In particular, Nathan received the diptheria-tetanus-acellular pertussis vaccine ("DTaP") on 10/21/2002, 1/6/2003, 3/10/2003, 2/18/2004, and 10/13/2006 and the measles, mumps, and rubella vaccine ("MMR") on 11/17/2003 and 5/14/2007.

[8] All of the evidence filed in the OAP test cases is available to any petitioner in the OAP, as well as to respondent. However, I note that there did not appear to be any material disputes in the OAP test cases about what constituted the early symptoms of autism or other ASD. Because omnibus test case decisions are not binding on the other omnibus participants, the primary advantage to both parties in conducting test case hearings is the creation of a body of evidence that can be considered in other cases. *Snyder*, 2009 WL 332044, at *2-3; *Dwyer*, 2010 WL 892250, at *2.

"The terms 'autism' and 'autism spectrum disorder' have been used to describe a set of developmental disorders characterized by impairments in social interaction, impairments in verbal and non-verbal communication, and stereotypical restricted or repetitive patterns of behavior and interests." *Cedillo,* 2009 WL 331968, at *7 (an OAP Test Case). The specific diagnostic criteria for ASD are found in the Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Association, 4th ed text revision 2000 ("DSM-IV-TR"), the manual used in the United States to diagnose dysfunctions of the brain. *See* testimony of Dr. Eric Fombonne in *Cedillo* ("Fombonne Tr.") at 1278A.[9] The manual identifies the behavioral symptoms recognized by the medical profession at large as symptoms of ASD.[10] The DSM-IV-TR contains specific diagnostic criteria for autistic disorder (often referred to as "autism"[11] or "classic autism"), Asperger's disorder, and pervasive developmental disorder-not otherwise specified (most frequently referred to as ("PDD-NOS")). It is not uncommon for parents and even health care providers to use these terms in non-specific ways, such as referring to a child as having an "autism diagnosis," even though the specific diagnosis is PDD-NOS. Of note, a child's diagnosis within the autism spectrum may change from autistic disorder to PDD-NOS (or vice versa) over time.

A. Diagnosing Autism Spectrum Disorders.

The behavioral differences in autism spectrum disorders encompass not only delays in development, but also qualitative abnormalities in development. Fombonne Tr. at 1264A; testimony of Dr. Max Wiznitzer in *Cedillo* ("Wiznitzer Tr.") at 1589-91. There can be wide variability in children with the same diagnosis. One child might lack any language at all, while another with a large vocabulary might display the inability to engage in a non-scripted conversation. Wiznitzer Tr. at 1602A-1604. However, both would have an impairment in the communication domain.

Testing for the presence of an ASD involves the use of standardized lists of questions about behavior directed to caregivers and parents, as well as observations of behaviors in standardized settings by trained observers. Fombonne Tr. at 1272A-74A. One behavioral symptom alone, such as hand-flapping, would not be diagnostic of an ASD, but if present, it would be a symptom that would be part of the diagnostic picture. As Dr. Fombonne explained, in diagnosing an ASD, "we try to observe symptoms, and

[9] Transcripts from the OAP test cases, including *Cedillo*, may be accessed at http://www.uscfc.uscourts.gov/omnibus-autism-proceeding (last checked on June 19, 2012).

[10] Pervasive developmental disorders ("PPD") is the umbrella term used in the DSM-IV-TR at 69. I use the term ASD rather than PDD because of the possible confusion between "PDD" (the umbrella term referring to the general diagnostic category) and "PDD-NOS," which is a specific diagnosis within the general diagnostic category of PDD or ASD. *See Dwyer,* 2010 WL 892250 at *1 n.4 & *29 n.108.

[11] I use the term "autism" to refer solely to the specific diagnosis of "autistic disorder."

when we have observed enough symptoms, then we see if the child meets these criteria." Fombonne Tr. at 1278A-79; *see also* testimony of Dr. Michael Rutter in the *King*[12] OAP test case ("Rutter Tr.") at 3253-54 (describing diagnostic instruments and their use in clinical settings).

Typically in children with autism spectrum disorders, the symptoms have been present for weeks or months before parents report them to health care providers. Fombonne Tr. at 1283. The most common age at which parents recognize developmental problems, usually problems in communication or the lack of social reciprocity, is at 18-24 months of age. Rutter Tr. at 3259-60. The development of symptoms of an ASD occurs very gradually, and it is not uncommon for the parents to be unable to date the onset very precisely. Fombonne Tr. at 1285A-1286A.

1. Autistic Disorder (Autism).

A diagnosis of autistic disorder requires a minimum of six findings from a list of impairments divided into three domains of impaired function: (1) social interaction; (2) communication; and (3) restricted, repetitive, and stereotyped patterns of behavior, interests, and activities. At least two findings related to social interaction and at least one each in the other two domains are required for diagnosis. To meet the diagnostic criteria for autism, the child must have symptoms consistent with six of the twelve listed types of behavioral impairments. Furthermore, the abnormalities in development must have occurred before the age of three. Fombonne Tr. at 1264A, 1279; Wiznitzer Tr. at 1618; Rutter Tr. at 3250. Although the majority of children with autism have developmental delays, many are of normal intelligence. Fombonne Tr. at 1276; Rutter Tr. at 3256. In testimony in the *Cedillo* OAP test case, Dr. Wiznitzer described the three domains as the "core features" of a diagnosis on the autism spectrum. Wiznitzer Tr. at 1589-92. Children with autism are most symptomatic in the second and third years of life. Wiznitzer Tr. at 1618.

2. Pervasive Developmental Disorder-Not Otherwise Specified.

The DSM-IV-TR defines PDD-NOS as "a severe and pervasive impairment in the development of reciprocal social interaction," coupled with impairment in either communication skills or the presence of stereotyped behaviors or interests. DSM-IV-TR at 84. The diagnosis is made when the criteria for other autism spectrum disorders, or other psychiatric disorders such as schizophrenia, are not met. *Id*. It includes what has been called "atypical autism," which includes conditions that present like autistic disorder, but with onset after age three, or which fail to meet the specific diagnostic criteria in one or more of the domains of functioning. *Id*. As was noted in the *Dwyer* OAP test case, this is the most prevalent of the disorders on the autism spectrum. *Dwyer,* 2010 WL 892250 at *30.

[12] *King,* 2010 WL 892296.

3. Asperger's Disorder.

Asperger's syndrome is a form of high-functioning autism. It presents with significant abnormalities in social interaction and with restricted, repetitive, and stereotyped patterns of behavior, interests, and activities. *See* DSM-IV-TR at 84.

B. The Domains of Impairment and Specific Behavioral Symptoms.

1. Social Interaction Domain.

This domain encompasses interactions with others. Fombonne Tr. at 1264A. There are four subgroups within this domain. Wiznitzer Tr. at 1594. The subgroups include: (1) a marked impairment in the use of nonverbal behavior, such as gestures, eye contact and body language; (2) the failure to develop appropriate peer relations; (3) marked impairment in empathy; and (4) the lack of social or emotional reciprocity. Wiznitzer Tr. at 1594-96. To be diagnosed with autism (autistic disorder), the patient must have behavioral symptoms from two of the four subgroups. Wiznitzer Tr. at 1594. For an Asperger's diagnosis, there must be two impairments in this domain as well. DSM-IV-TR at 84. Children who do not display "the full set of symptoms" are diagnosed with PDD-NOS. Fombonne Tr. at 1275A. Symptoms used to identify young children with impairments in the social interaction domain include lack of eye contact, deficits in social smiling, lack of response to their name, and the inability to respond to others. Fombonne Tr. at 1269A-70A.

Doctor Wiznitzer described the degrees of impairment in interactions with others as a continuum, with affected children ranging from socially unavailable to socially impaired. A child who is socially unavailable may exhibit such behaviors as failing to seek consolation after injury or purposeless wandering, or may simply appear isolated. Wiznitzer Tr. at 1598. A less impaired child might be socially remote, responding to an adult's efforts at social interaction, but not seeking to continue the contact. This child might roll a ball back and forth with an adult, but will not protest when the adult stops playing. Wiznitzer Tr. at 1599. Given a choice between playing with peers and playing by himself, a child with impairments in social interaction will play by himself. *Id.* Some children with ASD demonstrate socially inappropriate interactions, such as pushing other children in an effort to interact. Wiznitzer Tr. at 1600. A higher functioning child might attempt interaction, but does so as if reading from a script. As an example, Dr. Wiznitzer discussed a patient who, when asked where he lived, could not answer, but responded appropriately when Dr. Wiznitzer asked the child for his address. *Id.* at 1601.

2. Communication Domain.

The communication domain involves both verbal and non verbal communication, such as intonation and body language. Fombonne Tr. at 1263; Wiznitzer Tr. at 1602A. Language abnormalities in ASD encompass not only delays in language acquisition, but the lack of capacity to communicate with others. Fombonne Tr. at 1267A. Impaired

communication abilities are one of the "most important and early recognized symptoms" of autism. *Dwyer* OAP test case at *31.

There are four criteria within the communication domain. Wiznitzer Tr. at 1602A. They include: (1) a delay in or lack of development in spoken language, without the use of signs or gestures to compensate; (2) problems in initiating or sustaining conversation; (3) stereotypic or repetitive use of language, including echolalia and repeating the script of a video or radio presentation, such as singing a commercial jingle; and (4) the lack of spontaneous imaginative or make-believe play. Wiznitzer Tr. at 1602A-05.

Language delay, limited babbling, lack of gestures, lack of pointing to communicate things other than basic wants and desires (lack of "protodeclarative" vs. "protoimperative" pointing), are all early symptoms used to diagnose impairments in the communication domain. Fombonne Tr. at 1266A-68A. Doctor Wiznitzer described the failure to share discoveries via language in autistic children as well. Wiznitzer Tr. at 1606A. Children with ASD who have more developed language skills may display difficulties in social communication outside their limited area of interest. *Id*. at 1607.

Within the communication domain, children with ASD have difficulties in joint attention, which Dr. Wiznitzer described as sharing an action or activity with another person or even an animal. They also have problems with what he called metalinguistic skills, referring to the meaning behind the language used, which may be conveyed by tone, body language, humor, or sarcasm. Children with ASD may understand visual humor, illustrated by the cartoon of an anvil falling on the coyote's head, but lack the ability to understand a joke. Wiznitzer Tr. at 1607-09. They focus on the literal, rather than the figurative, meaning of words: telling a child with ASD to "hop to it" may elicit hopping, rather than an increase in speed in completing a task. These children use language primarily for getting their needs met. *Id*. at 1609. A child with ASD might lead a parent to the cookie jar, but would not lead a parent to a caterpillar crawling along the sidewalk.

Children with ASD often have impairments in specific types of play. They may understand cause and effect play, but have difficulties in imitative or representational play. In other words, they can push a button to make a toy figure pop up, but have difficulty with holding a tea party, putting a stuffed animal to bed, or feeding a doll. Wiznitzer Tr. at 1610-11. They also have impairments in symbolic play, in which an object such as a stick represents another object, such as a magic wand or sword. *Id*. at 1612.

Speech and language delays are the symptoms most commonly reported by parents as a concern leading to a diagnosis of ASD. *See* Fombonne Tr. at 1284 (one of first concerns noted by parents is the lack of language development); Rutter Tr. at 3253 (problems in social and communication domains tend to be observed much earlier than stereotyped behaviors).

A deficit in at least one of the subgroups in the communication domain is required for an autism diagnosis. Wiznitzer Tr. at 1602A-1603. An Asperger's diagnosis does not require a communication domain impairment. *See* Fombonne Tr. at 1275A-76. A PDD-NOS diagnosis requires an impairment in either this domain or the patterns of behavior discussed next. *See* Wiznitzer Tr. at 1592.

3. Restricted, Repetitive and Stereotyped Patterns of Behavior Domain.

There are four categories within this domain. They include (1) a preoccupation with an interest that is abnormal in intensity or focus, such as spinning a plate or a wheel or developing an intense fascination with a particular interest, such as dinosaurs, cartoon characters, or numbers; (2) an adherence to nonfunctional routines or rituals, such as eating only from a blue plate, sitting in the same seat, or walking the same route; (3) stereotypic or repetitive motor mannerisms, such as finger flicking, hand regard, hand flapping, or twirling; and (4) a persistent preoccupation with parts of an object, such as focusing on the wheel of a toy car and spinning it, rather than playing with the toy as a car. Wiznitzer Tr. at 1613A-15; Fombonne Tr. at 1271A-72A.

As Dr. Fombonne explained, this domain reflects abnormalities in the way play skills develop, as well as repetitive and rigid behavior. Fombonne Tr. at 1264A. A typical toddler may flick a light switch a few times, but the child with ASD performs the same action to excess. Wiznitzer Tr. at 1616. Doctor Rutter described one child who would not turn right; to make a right turn at a crossroads, he would have to make three left turns. Rutter Tr. at 3252-53.

For a diagnosis of autism, a child must display behaviors in at least one of the categories included in this domain. Wiznitzer Tr. at 1613A. An Asperger's diagnosis also requires at least one behavioral impairment encompassed in this domain. *See* Fombonne Tr. at 1275A-76. A PDD-NOS diagnosis requires either an impairment in this domain or an impairment in the communication domain. *See* Wiznitzer Tr. at 1592.

D. Summary.

The OAP evidence establishes that a diagnosis of ASD is based on observations of behavioral symptoms. The symptoms are categorized into three domains.

For a definitive diagnosis of autism, the child must display behavioral abnormalities in each of the domains, and must exhibit at least six of the 12 behavioral criteria in the three domains. There must be at least two behaviors encompassed in the social interaction domain, reflecting the importance of impaired social interaction in diagnosing ASD. The behavioral abnormalities must manifest before the age of three.

Thus, the absence of any specific symptom would not rule out the diagnosis, so long as the requisite numbers of impairments in each domain of functioning are present. Conversely, autism cannot be diagnosed by any single abnormal behavior, but the ultimate diagnosis is based on an accumulation of symptomatic behaviors. The

existence of any one behavioral abnormality associated with autism is sufficient to trigger the running of the statute of limitations.

For a diagnosis of Asperger's disorder, the child must display behavioral abnormalities similar to those of children with autistic disorder, but need not have a language abnormality. Fombonne Tr. at 1275A-76; *see also* DSM-IV-TR at 84 (requiring two impairments in social interaction and one in restricted, repetitive, and stereotyped patterns of behavior, interests, and activities for this diagnosis).

For a PDD-NOS diagnosis, the child must display behavioral abnormalities in all three domains. However, this diagnosis is given when the impairments fall short of the criteria required for a diagnosis of autism (autistic disorder). Fombonne Tr. at 1275A.

IV. Legal Standard.

The Vaccine Act provides that:

> a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the **expiration of 36 months** after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury…

§ 16(a)(2) (emphasis added). In *Cloer*, the Court of Appeals for the Federal Circuit affirmed that the "statute of limitations begins to run on a specific statutory date: the date of occurrence of the first symptom or manifestation of onset of the vaccine-related injury recognized as such by the medical profession at large." 654 F.3d. at 1340. The date of the occurrence of the first symptom or manifestation of onset "does not depend on when a petitioner knew or reasonably should have known" about the injury. *Id*. at 1339. Nor does it depend on the knowledge of a petitioner as to the cause of the injury. *Id*. at 1338.

The Federal Circuit also held that equitable tolling of the Vaccine Act's statute of limitations is permitted. *Id*. at 1340. However, citing to *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990), the Circuit noted that equitable tolling is to be used "sparingly," and not applied simply because the application of the statute of limitations would otherwise deprive a petitioner the opportunity to bring a claim. *See Cloer*, 654 F.3d at 1344-45. Citing to *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005), the Circuit also noted that equitable tolling should be applied only in "extraordinary circumstance[s]," such as when petitioner timely filed a procedurally defective pleading, or was the victim of fraud, or duress, *Cloer*, 654 F.3d at 1344-45; *see also Irwin*, 498 U.S. at 96.

V. Analysis.

The medical records and the filed statements indicate that Nathan began experiencing speech delay when he was 2 years of age on August 16, 2004. Since Nathan's first symptom or manifestation of onset or of the significant aggravation of his injury, ASD, must have occurred on or after January 18, 2005, it appears that the claim was filed 5 months after the expiration of the Vaccine Act's statute of limitations. Petitioner has not presented any evidence to indicate otherwise.

Additionally, petitioner has not presented any arguments that would support the application of equitable tolling to this claim, and the undersigned's examination of the record does not disclose any basis for applying equitable tolling to this case.

VI. Conclusion.

Petitioner has the burden to show timely filing. She has failed to establish that this case was filed within "36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury" as required by the Vaccine Act. §16(a)(2).

For the reasons set forth above, **this case is dismissed as untimely filed. The clerk is directed to enter judgment accordingly.**[13]

IT IS SO ORDERED.

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Gary J. Golkiewicz
Special Master

[13] This document constitutes the undersigned's final "Decision" in this case, pursuant to § 12(d)(3)(A). If petitioner wishes 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 petitioner wishes to preserve whatever right she may **have to file a civil suit (that is a law suit in another court) petitioner must file an "election to reject judgment** in this case and file a civil action" within 90 days of the filing of the judgment. § 21(a).