



Petitioner was born on August 16, 1955. Pet. Ex. 1 at 11. Petitioner received her first Hep. B vaccination on November 11, 2002, subsequent to starting a new job as an admitting supervisor at the “Front Door” of the Heart Institute in Spokane, Washington. Petitioner received her second and third Hep. B vaccinations on December 24, 2002 and May 23, 2003, respectively.

The principle purpose of the fact hearing convened on January 23, 2007 was to determine the timing of onset of the symptoms of Petitioner’s alleged vaccine related injuries. Petitioner’s affidavit filed on May 18, 2005 described the first symptoms of injury occurring the same day she received her second Hep. B vaccination, on December 24, 2002. See Pet. Ex.13 at 2. Petitioner averred “[t]hat night my feet started aching, and I had to slip my feet out of my shoes at my sister’s house, and on the drive home. I remember this because it was Christmas Eve and I never remove my shoes when visiting her. After that day my feet worsened.” Id. Petitioner testified to the same at the hearing. However, Petitioner’s primary care physician, Dr. Joan Zimmer, notes in her medical records from Petitioner’s first appointment after the December 24, 2002 vaccination on March 18, 2003, that Petitioner had been “c/o [complaining of] bilateral foot pain x3 weeks.” Pet. Ex. 1 at 4. If Dr. Zimmer’s notes are correct, the onset of Petitioner’s post-vaccination symptoms would be in late February. In contrast, the notes of Petitioner’s treating rheumatologist, Dr. Stevenson, from Petitioner’s first visit with him on May 30, 2003, reflect that Petitioner reported that the problems with her feet began in January. Pet. Ex. 5 at 19. The undersigned finds the onset of Petitioner’s symptoms of her injuries began on December 24, 2002, for the following reasons.

Testimony was taken at the January 23, 2007 hearing from three of Petitioner’s former coworkers. The undersigned finds, as was discussed informally with the parties, Petitioner’s three fact witnesses to be highly credible. Sandra Doe, Lynn Doe, and Lyle Doe each met and worked closely with Petitioner at the Heart Institute from approximately late November of 2002 until approximately September of 2003. The three witnesses all placed the onset of Petitioner’s symptoms immediately subsequent to her December 24, 2002 vaccination. Sandra Doe testified that “shortly after - immediately after the Christmas break” Petitioner began to have health problems. Transcript (Tr.) at 5. Sandra Doe further testified Petitioner complained at that time of “pain in her feet initially,” and that “[s]he limped quite noticeably.” Tr. at 5-6. Lynn Doe testified she remembered when Petitioner “came back from Christmas . . . she came back with her feet hurting.” Tr. at 16. Lyle Doe testified that he noticed Petitioner having health problems “right after the holiday season.” Tr. at 27. The undersigned accepts the testimony of Petitioner’s three fact witnesses, who independently testified they observed the onset of Petitioner’s injuries when she returned to work following the Christmas holiday in 2002. The three fact witnesses testified consistently with each other, Petitioner’s recollection of first experiencing foot pain on December 24, 2002, and Dr. Stevenson’s contemporaneous records of Petitioner’s first visit with him on May 30, 2003, where Petitioner reported the problems with her feet began in January. Pet. Ex.5 at 19; Pet. Ex. 27. The undersigned notes each of Petitioner’s coworkers credibly explained how they were able to so clearly remember events from many years ago. Each witness testified at the end of 2002 they had begun work at the “Front Door” which was a new and

unique project of the Heart Institute, thus events that occurred during that time frame stood out in their memories. See Tr. at 5, 23, 34.

An additional issue was raised at the January 23, 2007 hearing regarding the severity of Petitioner's injuries following her December 24, 2002 Hep. B vaccination. As aforementioned, Petitioner's three fact witnesses gave highly credible testimony at the hearing regarding the onset of Petitioner's alleged injuries, however, the undersigned does not find credible Petitioner's testimony regarding the severity of her alleged injuries. Petitioner described both in her affidavit and testimony on January 23, 2007, experiencing extreme pain following her second Hep. B vaccination. Petitioner averred in February of 2003 "[i]t was like walking on glass or hot coals. It was painful to put any pressure on my toes. I had to put a big pillow under my bed sheets to make a tent for my feet because it hurt when the blankets put pressure on my toes." Pet. Ex. 13 at 2. Despite this extreme description of physical pain, petitioner who worked in a medical facility, did not see a doctor until March 18, 2003. On that date, Petitioner saw her primary care physician, Dr. Joan Zimmer, whose contemporaneous medical records note first that petitioner had a complaint of a "frog in throat" and "foot pain." Pet. Ex. 1 at 4.

Petitioner testified that the reason she did not seek medical care for such a long period of time was that she believed the pain was the result of a corn and she "would never go to the doctor for corns." Tr. at 88. The undersigned finds it incredulous that petitioner who worked with a number of medical professionals believed such extreme pain as she described was due to a corn and did not seek out medical attention because she did not want to take time off from her new employment or go to the doctor for a corn. Further, petitioner in her affidavit averred that after her third Hep. B vaccination on May 23, 2007 she experienced the following reaction.

The following morning and for the next few days my left arm was so incredibly sore I could not lift it. I had to "carry" it. On May 28<sup>th</sup> my right wrist was sore. I massaged it for a few minutes and within an hour it was swollen and extremely painful.

Pet. Ex. 13 at 3. Petitioner testified at hearing consistent with the above statement from her affidavit, but conceded she did not know the exact language she used to describe her arm pain to Dr. Stevenson on May 30, 2007. Tr. at 83-84. Dr. Stevenson's contemporaneous records of the May 30, 2007 appointment document that her May 23, 2007 vaccination was "complicated by moderate pain and restriction of the left shoulder which seems to have let up by this point." Pet. Ex. 5 at 19. Petitioner's recollection regarding the severity of her injuries following her vaccinations differs greatly from the histories provided to her physicians in the contemporaneous medical records and thus should be accorded little weight. United States v. United State Gypsum Co., 333 U.S. 364, 396 (1947). The undersigned places greater reliance on the contemporaneous medical records where "accuracy has as an extra premium." Cucuras v. Sec.'y of HHS, 993 F.2d 1525, 1528 (Fed. Cir. 1993). In addition the undersigned was simply not impressed with the quality of Petitioner's testimony. For the foregoing reasons the undersigned finds more

persuasive the contemporaneous medical records and rejects Petitioner's testimony and statements in her affidavit regarding the severity of her injuries.

In conclusion, the undersigned finds that the onset of Petitioner's alleged injuries occurred on December 24, 2002. However, Petitioner's testimony regarding the severity of her injuries in the months following her vaccinations is rejected as being incredulous and inconsistent with the contemporaneous medical records.

The parties shall file a **joint status report no later than August 16, 2007** outlining a proposed schedule for further proceedings in this case.

**IT IS SO ORDERED.**

s/ Gary J. Golkiewicz  
Gary J. Golkiewicz  
Chief Special Master