

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 12-769V

(Filed: November 13, 2013)

STEPHEN BUNDY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

* UNPUBLISHED
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* Dismissal Decision;
* Pneumovax Not Listed on
* the Vaccine Injury Table;
* Failure to State A Claim
* Upon Which
* Relief Can Be Granted
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Michael Williams, Buffalo, NY, for petitioner.
Alexis Babcock, Washington, DC, for respondent.

DISMISSAL DECISION¹

On November 13, 2012, Stephen Bundy (“Petitioner”), filed a petition seeking compensation under the National Vaccine Injury Compensation Program

¹ Because this decision contains a reasoned explanation for the undersigned’s decision in this case, the undersigned intends to post this ruling 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 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b).

(“the Program”).² In his petition, Petitioner alleged that he suffered the vaccine-related injury of brachial neuritis as a result of an Adacel Tdap tetanus vaccination he received on September 27, 2007. Petition.

On February 6, 2013, Petitioner filed medical records and a statement of completion. On March 4, 2013, this case was re-assigned to the undersigned special master. On the same date, Respondent filed a status report identifying several items as missing from the record. Resp’t’s Status Report 3/4/2013. One of the items identified by Respondent was Petitioner’s record of vaccination. Id.

On September 17, 2013, Petitioner filed an immunization consent form, which reflects that Petitioner received a Pneumococcal vaccination manufactured by Merck, Lot Number 1296X. The only pneumococcal vaccination Merck manufactures is Pneumovax 23, which is a polysaccharide vaccine.³

On October 24, 2013, the undersigned held a telephonic status conference and informed Petitioner that the Pneumovax vaccine that he received is not listed on the Vaccine Injury Table. See Scheduling Order (non-pdf), 10/24/2013.

On October 25, 2013, Respondent filed a motion to dismiss, which is now ripe for consideration.

To be entitled to compensation under the Vaccine Act, Petitioner must demonstrate that he “received a vaccine set forth in the Vaccine Injury Table.” Section 11(c)(1)(A).

There are two types of pneumococcal vaccines used to vaccinate against pneumococcus—pneumococcal conjugate and polysaccharide vaccine. The polysaccharide vaccine is distributed under the brand name Pneumovax. Only the former, the pneumococcal conjugate vaccine, is covered under the Vaccine Act. See National Vaccine Injury Compensation Program: Addition of Pneumococcal Conjugate Vaccines to the Vaccine Injury Table, 66 Fed. Reg. 28166 (May 22, 2001) (“Through this notice pneumococcal conjugate vaccines are now included as covered vaccines under Category XIII of the Table. Because the CDC only recommended pneumococcal conjugate vaccines to the Secretary for routine

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter “Vaccine Act” or “the Act”). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

³ See www.merckvaccines.com, last visited on October 30, 2013.

administration to children, polysaccharide-type pneumococcal vaccines are not covered under the VCIP or included on the Table.”). Accordingly, Pneumovax, the vaccine received by Petitioner, is not a covered vaccine on the Vaccine Injury Table.

As Petitioner received the Pneumovax vaccine and not the pneumococcal conjugate vaccine, Petitioner is unable to show that he “received a vaccine set forth in the Vaccine Injury Table.” Section 11(c)(1)(A). Therefore, the undersigned lacks subject matter jurisdiction to adjudicate Petitioner’s claim. The undersigned must dismiss this petition.

The clerk of the court is directed to dismiss Petitioner’s claim for lack of jurisdiction.⁴

IT IS SO ORDERED.

s/Lisa Hamilton-Fieldman
Lisa Hamilton-Fieldman
Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party’s filing a notice renouncing the right to seek review.