

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-1971V

Filed: October 21, 2011

Not to be published

LEE R. TOUCHTON and
TRACI S. TOUCHTON, as
parents and natural guardians of
Cooper Derrold Touchton, a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

Autism; Decision Dismissing
the Petition; Insufficient Proof
of Causation; Vaccine Act Entitlement;
Denial Without Hearing

DECISION¹

On August 22, 2003, petitioners filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),² alleging that Cooper was injured by a vaccine or vaccines listed in the Vaccine Injury Table. *See* § 14. The information in the record, however, does not show entitlement to an award under the Program.

On September 23, 2011, petitioners filed a document seeking a decision dismissing their petition. Petitioners assert in that document that under the current applicable law, petitioners will

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in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 § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

²The 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. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

be unable to demonstrate entitlement to compensation in the Program. Accordingly, petitioners request that the undersigned dismiss the above-captioned petition.

To receive compensation under the Program, petitioners must prove either 1) that Cooper suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Cooper 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 Cooper suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Cooper’s injury was vaccine-caused.

Under the Act, the petitioners may not be given a Program award based solely on the petitioners’ claims 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 not sufficient to support petitioners’ claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioners have failed to demonstrate either that Cooper suffered a “Table Injury” or that his injury was “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. In the absence of a timely-filed motion for review of this Decision, the Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master