

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-749V

Filed: October 3, 2011

DAVID ROSIEWICZ,)	
)	NOT TO BE PUBLISHED
Petitioner,)	
)	Hepatitis B (Hep B); Tetanus-diphtheria
v.)	(Td); Mumps-Measles-Rubella (MMR);
)	varicella; thrombocytopenia;
)	polyarthralgia; Petitioner's Motion for a
SECRETARY OF)	Decision; Dismissing the Petition for
HEALTH AND HUMAN SERVICES,)	Insufficient Proof of Causation; Vaccine
)	Act Entitlement; Denial Without Hearing
Respondent.)	
)	

Michael G. McLaren, Black & McLaren, Memphis, T.N., for Petitioner.

Linda S. Renzi, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION ¹

On October 25, 2007, David Rosiewicz ("Petitioner") filed a Petition For Vaccine Compensation in the National Vaccine Injury Compensation Program ("the Program").² Petitioner alleged that he "became sick" as a result of Hepatitis B ("Hep B") vaccinations administered to him on October 15, 2004, and February 28, 2005. Pet. at 1. On March 19, 2010, Petitioner filed an amended petition in which he alleged that he suffered from thrombocytopenia and polyarthralgia as the result of the following vaccinations: Hep B and Tetanus-diphtheria ("Td") vaccines administered on September 10, 2004; Mumps-Measles-Rubella ("MMR") and varicella vaccines administered on September 13, 2004; Hep B, MMR, and varicella vaccines administered on October 15, 2004; and a Hep B vaccine administered on February 28, 2005. Am. Pet. at 1. The information in the record, however, does not show entitlement to an award under the Program.

¹ In accordance with Vaccine Rule 18(b), petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Redactions ordered by the special master, if any, will appear in the decision as posted on the United States Court of Federal Claims' website.

² The 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.

On September 8, 2011, Petitioner moved for a decision dismissing his petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

To receive compensation under the Program, 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 Petitioner suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Petitioner’s alleged injury was vaccine-caused.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner’s 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 there are insufficient medical records supporting Petitioner’s claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that Petitioner has failed to demonstrate either that he suffered a “Table Injury” or that his injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

s/Dee Lord
Dee Lord
Special Master