

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-801V

Filed: October 31, 2011

_____)	
GABRIELLE SWANK, a minor)	
by and through her natural mother)	
and next friend, SHANNON SCHRAG)	
)	NOT TO BE PUBLISHED
Petitioner,)	
)	Human papillomavirus (HPV);
v.)	autoimmune/inflammatory disorder;
)	seizures; cerebral vasculitis; dyspnea;
)	depression; paresthesia; petitioner's
SECRETARY OF)	motion for a decision; dismissing the
HEALTH AND HUMAN SERVICES,)	petition for insufficient proof of
)	causation; denial without hearing
Respondent.)	
_____)	

William P. Ronan, III, The Ronan Law Firm, Overland Park, K.S., for Petitioner.

Darryl R. Wishard, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

On November 19, 2010, Shannon Schrag ("Petitioner"), on behalf of her daughter, Gabrielle Swank ("Gabrielle") filed a Petition For Vaccine Compensation in the National Vaccine Injury Compensation Program (the "Program").² Petitioner alleged that as a result of receiving the human papillomavirus ("HPV") vaccine on November 29, 2007, February 29, 2008, and June 27, 2008, Pet. at 1-2, Gabrielle suffered from various injuries, which included neurological injury, autoimmune/inflammatory disorder, neurotoxicity, seizures or seizure-like activity, cerebral vasculitis, dizziness, dyspnea, episodes of syncope or near syncope, frequent debilitating headaches, weakness, numbness, fatigue, depression, light sensitivity, partial loss of vision, an injury to the heart including irregular heart rate, tremors, paresthesia, chest pain, and decreased

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 document 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.

ability to concentrate. Pet. at 5. The information in the record, however, does not show entitlement to an award under the Program.

On October 31, 2011, Petitioner moved for a decision dismissing the petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation.

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