

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-240V

June 15, 2011

Not to be Published

CHARESE BENTLEY, *

Petitioner, *

v. * Dismissal; no proof of causation

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Charese Bentley, Grand Prairie, TX for petitioner pro se.
Althea W. Davis, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

On April 15, 2010, petitioner filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §300aa-10 et seq., alleging that influenza vaccine, hepatitis vaccine (without specifying whether it was A or B), and tetanus toxoid caused

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. Petitioner has 14 days within which to move to redact a decision on one of these bases.

her brachial plexus neuropathy, cervical and lumbar neuritis, fever, shoulder and arm pain, finger numbness, muscle weakness, chronic pain disorder, an increase in migraine headaches, difficulty swallowing, facial numbness and tingling, and rheumatoid arthritis.

Initially petitioner was represented by counsel. During the Rule 4(b) conference on June 30, 2010, petitioner's counsel stated he was still gathering medical records. On July 29, 2010 at the next status conference, petitioner's counsel stated that he was uploading five sets of medical records and was waiting for three more sets. During the next telephonic status conference on October 13, 2010, petitioner's counsel stated that now that he had the complete medical records, he understood what they showed and he was perplexed. He stated he did not know what to do and might ask to be relieved as counsel for petitioner.

On October 29, 2010, during the next telephonic status conference, petitioner's counsel said he had not been able to contact petitioner by phone and therefore sent her a letter. He thought the contents of the letter were the reason she was not returning his calls.

On November 29, 2010, during the next telephonic status conference, petitioner's counsel stated he had sent a certified letter to petitioner for which she signed. She e-mailed him that she did not want to dismiss the case. Petitioner's counsel moved to withdraw as counsel, a motion which the undersigned granted in an Order dated November 29, 2010.

On February 18, 2011, the undersigned issued an Order stating that petitioner had been provided with a list of vaccine attorneys, and setting a telephonic status conference for March 8, 2011.

On March 8, 2011, the undersigned held a telephonic status conference with petitioner who said she had contacted four attorneys and a worker's compensation attorney. The undersigned set a new telephonic status conference for April 7, 2011 at 1:00 p.m., a date and

time amenable to both petitioner and respondent's counsel. Petitioner did not appear at this status conference.

On April 8, 2011, the undersigned issued an Order stating that petitioner should contact the undersigned's law clerk to set up a new telephonic status conference. Petitioner did not do this.

On May 9, 2011, the undersigned issued an Order to Show Cause directing petitioner to contact the undersigned's law clerk by June 6, 2011 or the undersigned would dismiss the case for failure to prosecute. It is now more than one week beyond this deadline and petitioner has failed to contact the undersigned's law clerk. Other than petitioner's appearance at one status conference, petitioner has refused to appear at a scheduled status conference and to contact the undersigned's law clerk for over two months.

FACTS

Petitioner was born on December 15, 1966.

She alleges that, on April 17, 2007, she received flu vaccine, some type of hepatitis vaccine, and tetanus toxin.

On September 10, 2007, petitioner saw Dr. Pierre Herding, a neurologist, complaining of pain in her neck and upper shoulders, which had been present for the prior three weeks (indicating a mid-August onset). She said she began to develop a mild discomfort in mid-July (three months after petitioner's alleged vaccinations) which had gradually increased since then. On physical examination, petitioner's upper extremities did not have atrophy. Her reflexes were 2 (normal). Her tone was normal. Dr. Herding's diagnosis was probable chronic muscle strain since she was an office clerk. Med. recs. at Ex. 2, pp. 57, 58.

On October 29, 2007, petitioner returned to Dr. Herding with persistent neck and shoulder pain. Med. recs. at Ex. 2, p. 43.

On November 9, 2007, petitioner saw Dr. Imran Iqbal, complaining of injuring her right ankle at work. She had had pain all over her body for the past two and ½ years at least. (This would put onset of pain in May 2005, two years before her vaccinations.) She stated she had recently started having an aching sensation in the muscles around her neck which seemed to radiate down her left arm. She also had intermittent numbness and tingling in her upper and lower extremities. A nerve conduction study and an MRI of her neck were normal. She had a positive Rh factor. Dr. Iqbal diagnosed petitioner with polyarthralgia, fatigue, and pregnancy. Med. recs. at Ex 1, pp. 12, 14.

On February 8, 2008, petitioner saw Dr. Stephen J. Becker, a physical medicine and rehabilitation specialist, stating she fell on her buttocks on May 25, 2007 (five weeks after her vaccinations). She had cervical and lumbar pain. Dr. Becker diagnosed petitioner with cervical radiculopathy/myelopathy. A nerve conduction velocity study did not show evidence of peripheral neuropathy, plexopathy, or entrapments. Med. recs. at Ex. 3, pp. 60-61.

On July 22, 2008, petitioner saw Dr. Charles E. Willis, II, a pain management specialist. She told him that she fell on her buttocks on May 25, 2007 and now could not work or drive. Her left arm got icy cold. She had pain associated with weakness in her left arm, ankles, and feet with tingling and numbness in her left arm, shoulders, and fingers that was sometimes stabbing. She reported that her left arm turns blue/purple. Med. recs. at Ex. 4, p. 67.

On September 10, 2009, petitioner returned to Dr. Iqbal. She injured her right ankle in 2003 (four years before her vaccinations) at work. Since that time, she had generalized body aches, fatigue, and poor sleep. An electromyography (EMG) of her left upper extremity and both

lower extremities showed no evidence of peripheral neuropathy, plexopathies, or entrapments. Her muscle mass, tone, and strength were normal throughout. She had slight atrophy in her left upper arm. Dr. Iqbal diagnosed petitioner with fibromyalgia, anemia, and fatigue. She had a positive ANA or rheumatoid factor. Med. recs. at Ex. 5, pp. 5, 7.

On September 16, 2009, petitioner returned to Dr. Herding, the neurologist, complaining of persistent pain in her left hand and shoulder subsequent to a fall. Med. recs. at Ex. 2, p. 38.

On October 27, 2009, petitioner saw Dr. Christine Huynh, giving a date of onset of July 8, 2007 (three months after vaccination) for the onset of her problems. She stated she had a reaction to a vaccination at work which caused a fall. She had pain in her neck, low back, both shoulders, and left leg. Med. recs. at Ex. 5, p. 69.

On November 3, 2009, petitioner saw Dr. Herding complaining of persistent pain in her left shoulder and neck developing in August 2007 (four months after vaccination), possibly due to repetitive strain. Med. recs. at Ex. 2, p. 56.

DISCUSSION

To satisfy her burden of proving causation in fact, petitioner must prove by preponderant evidence "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." Althen v. Sec'y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec'y of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[.]" the logical sequence being supported by

“reputable medical or scientific explanation[,]” *i.e.*, “evidence in the form of scientific studies or expert medical testimony[.]”

Petitioner has not provided any proof to satisfy Althen’s three prongs. Section 300a-13(a) of the Vaccine Act states that the special master may not rule in favor of petitioner “based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” Petitioner has not filed an expert medical opinion in support of her allegations and the medical records do not substantiate her allegations.

Moreover, many of the medical records substantiate that the onset of petitioner’s pain was either three or four months after vaccination or two or four years before vaccination. In some medical histories, she complained that her problems began after she fell (which occurred five weeks after vaccination), and she blamed vaccination for her fall.

Without expert evidence to support petitioner’s many allegations and varying onset dates, she has not proved that she suffered due to a vaccine reaction. Petitioner has not made a prima facie case of causation in fact.

CONCLUSION

Petitioner’s petition is dismissed. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master

² 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.