

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-115V

Filed: July 10, 2012

Not for Publication

JAMES BRYAN and ERIN BRYAN,
parents of COLE BRYAN, deceased,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Dismissal; Failure to Prosecute

James Bryan and Erin Bryan, E. Bridgewater, MA, for petitioners (pro se).
Lisa A. Watts, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

On February 17, 2012, petitioners filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-10 to -34 (2006), alleging that their son Cole suffered the onset of a seizure disorder and then died as a result of receiving DTaP, IPV, Hib, PCV, and rotavirus vaccines.

The undersigned held a telephonic status conference on March 12, 2012 in which both

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

petitioners and respondent's counsel participated. Petitioners stated that they sent Cole's medical records to Conway, Homer & Chin-Caplan. At that time, the law firm was reviewing the medical records and deciding whether to represent petitioners. The undersigned scheduled a status conference for Thursday, April 26, 2012 at 3:30 p.m. (EDT). This date and time was chosen with the approval of both petitioners and respondent's counsel and memorialized in an Order filed on March 13, 2012.

On April 26, 2012, petitioners did not appear for the scheduled status conference. The undersigned's judicial assistant called petitioners three times and left a voice message.

The undersigned issued an Order on April 27, 2012, instructing petitioners to contact her law clerk by May 18, 2012 to reschedule the status conference. The undersigned stated in the Order that if petitioners do not contact her law clerk, then she will issue an Order to Show Cause why this case should not be dismissed. Petitioners did not contact the undersigned's chambers.

On May 25, 2012, the undersigned issued an Order to Show Cause, ordering petitioners to contact her law clerk by June 27, 2012 to schedule another telephonic status conference or to advise her that they have retained counsel, or risk dismissal of their case.

To date, petitioners have not contacted the undersigned's law clerk or judicial assistant. The undersigned's law clerk called Conway, Homer & Chin-Caplan on May 22, 2012. The law firm confirmed that it declined to represent petitioners.

DISCUSSION

To satisfy their burden of proving causation in fact, petitioners 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[.]"

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. Id. at 1148.

Moreover, a special master may not find that a petitioner is entitled to compensation "based on the claims of a petitioner alone, unsubstantiated by medical records or by medical

opinion.” 42 U.S.C. § 300aa–13(1).

Petitioners must produce medical records or an expert medical opinion to show not only that but for the vaccines, Cole would not have had a seizure disorder which caused his death, but also that the vaccines were a substantial factor in bringing about his seizure disorder and resulting death. See Shyface v. Sec’y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

Since the March 12, 2012 status conference, petitioners have failed to prosecute their case. Petitioners have not filed any medical records or an expert opinion supporting causation. Petitioners did not appear for a scheduled court proceeding and did not respond to the undersigned’s March 13, 2012 Order or the May 25, 2012 Order to Show Cause. Finally, the undersigned specifically stated in her May 25, 2012 Order to Show Cause that if petitioners did not contact the law clerk by June 27, 2012, then their case would be dismissed.

CONCLUSION

Petitioners’ petition is **DISMISSED** for failure to prosecute and failure to make a prima facie case. 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.

Dated: _____

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.