

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-349V

September 8, 2011

Not to be Published

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ALICIA CHAMPLIN,

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Petitioner,

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v.

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Dismissal; statute
of limitations; Cloer

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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* * * * *

Michael S. Redhair, Tucson, AZ, for petitioner.

Debra A. Filteau Begley, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 categories listed above, the special master shall redact such material from public access.

On June 1, 2011, petitioner filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, alleging that Gardasil vaccine caused her syncope (fainting). Attached to the petition is a statement from a Ph.D. named Randall L. Tackett who states that petitioner began to faint on February 15, 2007.

The Vaccine Act statute of limitations requires that petitioners file their petitions within 36 months of the “first symptom or manifestation of onset” of their alleged vaccine injury. 42 U.S.C. § 300aa-16(a)(2). In order for petitioner to have filed her petition within the statute of limitations, she should have filed no later than February 16, 2010. She filed one year, three and one-half months too late.

During the first status conference with counsel on August 18, 2011, the undersigned brought to petitioner’s counsel’s attention the statute of limitations problem and recommended that counsel read Cloer v. Sec’y of HHS, ___ F.3d ___, 2011 WL 3374302 (Fed. Cir. Aug. 5, 2011). The undersigned gave counsel time to evaluate his client’s legal position.

During the second status conference with counsel on August 22, 2011, petitioner’s counsel stated he had not yet done legal research but had spoken to his client that morning.

During the third status conference with counsel on September 7, 2011, petitioner’s counsel stated that he saw no basis to contest dismissal based on the running of the statute of limitations. He also stated that he had spoken to his client and she agreed that there was no defense to the running of the statute. He said he would not request any attorneys’ fees or costs.

The undersigned hereby orders the petition dismissed.

DISCUSSION

The United States is sovereign and no one may sue it without the sovereign's waiver of immunity. United States v. Sherwood, 312 U.S. 584, 586 (1941). When Congress waives

sovereign immunity, courts strictly construe that waiver. Library of Congress v. Shaw, 478 U.S. 310 (1986); Edgar v. Sec'y of HHS, 29 Fed. Cl. 339, 345 (1993); McGowan v. Sec'y of HHS, 31 Fed. Cl. 734, 740 (1994); Patton v. Sec'y of HHS, 28 Fed. Cl. 532, 535 (1993); Jessup v. Sec'y of HHS, 26 Cl. Ct. 350, 352-53 (1992) (implied expansion of waiver of sovereign immunity was beyond the authority of the court). A court may not expand on the waiver of sovereign immunity explicitly stated in the statute. Broughton Lumber Co. v. Yeutter, 939 F.2d 1547, 1550 (Fed. Cir. 1991).

The statute of limitations in the Vaccine Act requires vaccinees to sue within 36 months of the onset of their alleged vaccine injury. Once the statute of limitations has run, vaccinees have no more recourse under the Vaccine Act.

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.