

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-903V

January 20, 2010

To be Published

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AURTHLINE SYLVIA IVEY, \*

Petitioner, \*

v. \*

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

Respondent. \*

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Altom M. Maglio, Sarasota, FL, for petitioner.

Melonie J. McCall, Ann D. Martin, Washington, DC, for respondent.

Entitlement: staph aureus not influenza vaccine caused quadriplegia; ruling on the record

**MILLMAN, Special Master**

## DECISION<sup>1</sup>

Petitioner filed a petition on December 17, 2008 under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that influenza vaccine that she received on December 20, 2005 caused her Guillain-Barré syndrome. Her hospital records, however, indicate she had transverse myelitis.

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<sup>1</sup> 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 clearly be an unwarranted invasion of privacy. When such a decision is filed, the parties have 14 days to identify and move to delete 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 delete such material from public access.

On January 11, 2010, petitioner filed as exhibit 8 an expert opinion from Dr. Thomas F. Morgan, a neurologist, stating that petitioner had acute respiratory failure, acute staph aureus septicemia, and progressive quadriplegia with severe spine pain. Ex. 8, p. 2. He states that her abscess was secondary to staph aureus septicemia. *Id.* This resulted in a spinal cord compressive myelopathy and cervical discitis. The bacterial epidural abscess caused her spinal cord swelling compression and quadriplegia. Ex. 8, p. 3. Dr. Morgan states that, in his opinion, petitioner's "influenza vaccine was not causally related to this cervical spine abscess." *Id.* He also states that petitioner's transverse myelitis was not related to an autoimmune post-vaccinal disorder. Instead, staph aureus septicemia caused her to have a cervical epidural abscess with spinal cord compression, resulting in her symptoms. *Id.*

On January 12, 2010, petitioner moved for judgment on the record. The undersigned grants petitioner's motion. The status conference set for January 22, 2010 at 11:30 a.m. is hereby cancelled.

## **FACTS**

Petitioner was born on October 19, 1960.

On December 20, 2005, petitioner received influenza vaccine. Med. recs. at Ex. 1, p. 1.

From December 30, 2005 to January 6, 2006 (when she was transferred to Emory Healthcare), petitioner was at Wellstar Douglas Hospital with a diagnosis of staph aureus septicemia, influenza with pneumonia, quadriplegia, and encephalitis. Med. recs. at Ex. 3, pp. 1, 2. Petitioner's onset had been four days earlier (December 26, 2005) when she had a cold and was coughing. Med. recs. at Ex. 2, p. 7. On her discharge on January 6, 2006, she was

diagnosed with transverse myelitis, respiratory failure secondary to neuromuscular weakness, sepsis, and bilateral pneumonia. Med. recs. at Ex. 2, p. 80.

Petitioner was at Emory Healthcare from January 6 to 15, 2006 with a diagnosis of methicillin sensitive staphylococcus aureus (MRSA) and cervical spinal abscess. Med. recs. at Ex. 3, p. 1.

### **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. Secretary of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary 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, supra, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. *Id.* at 1148.

Petitioner must show not only that but for the vaccine, she would not have had the injury, but also that the vaccine was a substantial factor in bringing about her injury. Shyface v. Secretary, HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

In the instant action, however, petitioner's neurologic expert Dr. Morgan states that staph aureus, not influenza vaccine, caused petitioner's unfortunate quadriplegia. He states that petitioner does not have a post-vaccinal injury. Petitioner has failed to make a prima facie case that influenza vaccine caused her transverse myelitis.

### **CONCLUSION**

Petitioner's petition is dismissed with prejudice. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance herewith.<sup>2</sup>

### **IT IS SO ORDERED.**

January 20, 2010  
DATE

s/Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> 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.