

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-295V

November 21, 2011

Not to be Published

THELMA STAMPER, *

Petitioner, *

v. * Petitioner's motion to dismiss;

no proof of vaccination

SECRETARY OF THE DEPARTMENT *

OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Diana L. Stadelnikas, Sarasota, FL, for petitioner.

Chrysovalantis P. Kefalas, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

On May 17, 2010, petitioner filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-10-34 (2006), alleging that an

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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.

influenza vaccination she received on a day in September 2008 caused her Guillain-Barré syndrome (GBS). Petitioner did not file proof of vaccination with the petition.

In a phone call to petitioner's doctor on December 17, 2009, petitioner requested her immunization records for 2008, but no immunization record was found. Med. recs. at Ex. 3, p. 26.

Petitioner's counsel made numerous attempts after the first telephonic status conference on June 14, 2010 to locate petitioner's immunization record.

On November 11, 2011, petitioner filed a status report stating she was unable to locate proof of vaccination. On November 15, 2011, the undersigned held a telephonic status conference to inquire if petitioner were dismissing. Petitioner's counsel stated that she had discussed dismissal with her client and was waiting to hear from petitioner whether she agreed.

On November 21, 2011, petitioner filed Petitioner's Motion for a Decision Dismissing the Petition, stating that further investigation of the facts and science demonstrated to her that she will be unable to prevail on the issue of entitlement. She believed proceeding further would be unreasonable and wasteful of the time of the court and the parties. She understands that the decision of the undersigned will result in a judgment against her. Respondent reviewed petitioner's motion and has no objection.

The undersigned hereby orders the petition dismissed. The status conference scheduled for Tuesday, November 22, 2011, at 12:00 p.m. (EST), is cancelled.

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[.]”

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.

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

In the instant action, petitioner has no proof of vaccination and has asked for dismissal.

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.

November 21, 2011
DATE

s/Laura D. Millman
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.