

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-377 V

Filed: June 14, 2012

Not for Publication

LISA WOODS and JASON FORD, *
as parents and natural guardians of *
CASON EUGENE FORD, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Lisa Woods and Jason Ford, Chattanooga, TN, for petitioners (pro se).
Julia W. McInerney, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

On June 18, 2010, petitioners filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-10 to-34 (2006), alleging that a seasonal flu vaccination caused their son Cason to develop Guillain-Barré Syndrome (“GBS”).

Initially, petitioners were represented by counsel. On October 4, 2011, petitioners’ counsel filed a motion to withdraw and a motion for interim attorneys’ fees. The undersigned granted the motion to withdraw on October 5, 2011, sent petitioners a list of vaccine attorneys,

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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

and instructed petitioners, now proceeding pro se, to contact her law clerk by November 9, 2011 to schedule a status conference. After the undersigned issued another Order on November 17, 2011, Ms. Woods called the undersigned's law clerk on November 23, 2011, provided updated contact information, and scheduled a telephonic status conference for December 12, 2011.

During the telephonic status conference held on December 12, 2011, Ms. Woods indicated that she would like to retain another attorney and would look at the vaccine attorney list. The undersigned learned that Mr. Ford was incarcerated; he did not participate in the status conference. The undersigned scheduled another status conference for January 24, 2012, at 11:30 (EST) with Ms. Woods's approval and respondent's counsel's approval.

On January 24, 2012, Ms. Woods did not appear for the telephonic status conference. When the judicial assistant called her telephone number, a message from the phone provider played, stating that either the phone was turned off or the subscriber was outside the service area. The judicial assistant could not leave a voicemail.

The undersigned issued an Order on January 25, 2012, instructing Ms. Woods to contact the undersigned's law clerk by February 3, 2012 to reschedule the status conference. Ms. Woods never contacted the law clerk. Moreover, when the law clerk tried to reach Ms. Woods by phone, the same message from the phone provider played, and she could not leave a voicemail.

On February 14, 2012, the undersigned issued another Order, instructing Ms. Woods to contact her law clerk by February 27, 2012 to schedule a status conference. The undersigned's law clerk also obtained Mr. Ford's contact information. The undersigned directed the clerk to update Mr. Ford's contact information on record and send him copies of all court orders filed since petitioners' attorney withdrew, or October 5, 2011. When the law clerk tried to reach Ms. Woods by phone, she could not get through, and the same message from the phone provider played.

On March 1, 2012, the undersigned issued an Order to Show Cause, ordering petitioners to contact her law clerk by April 2, 2012 to schedule another status conference or advise her that they retained counsel, or risk dismissal of their case. The Order to Show Cause sent to Ms. Woods, however, was returned to the court as undeliverable mail. For that reason, the undersigned's law clerk once again tried to contact Ms. Woods.

On April 5, 2012, the law clerk called Ms. Woods. Someone answered the phone and stated that Ms. Woods was not available. The law clerk left a message with the person who answered. Ms. Woods did not return the call.

On April 9, 2012, the law clerk reached Ms. Woods and spoke with her. Ms. Woods said that she was still looking for an attorney to represent her and provided an updated address with the correct zip code. With Ms. Woods's approval, the law clerk scheduled a telephonic status conference for Wednesday, April 18, 2012, at 2:30 p.m. (EDT). Respondent's counsel later confirmed that she was also available at this date and time.

On April 18, 2012, Ms. Woods did not appear for the scheduled telephonic status conference. The undersigned's judicial assistant and the law clerk called Ms. Woods's phone number several times. On the first attempt, no one answered, and the judicial assistant left a voicemail. The law clerk tried a second time, but no one answered. On the third attempt, a woman who did not identify herself answered the phone. The law clerk asked if Ms. Woods was available, and the woman said that Ms. Woods was in the hospital and had pneumonia. The law clerk left a message with the woman who answered.

On April 19, 2012, the undersigned issued an Order. Because Ms. Woods was in the hospital, the undersigned gave her an additional two weeks to call and reschedule the status conference. The April 19 Order was sent to the correct address, and the certified mail was not returned as undeliverable to the court.

On May 3, 2012, the undersigned issued a second Order to Show Cause, ordering petitioners to contact her law clerk by June 4, 2012 to schedule another status conference or advise her that they have retained counsel. The Order stated that if petitioners did not contact the law clerk, the undersigned would dismiss the case for failure to prosecute. To date, petitioners have not contacted the undersigned's chambers.

Mr. Ford is also a petitioner in this case. He is currently incarcerated at CCA Silverdale Detention Facility in Chattanooga, TN. The law clerk obtained his mailing address at the correctional facility, and Mr. Ford has received all orders filed since February 14, 2012, and copies of the orders filed between October 5, 2011 and February 14, 2012. Since petitioners have been pro se, Mr. Ford has not participated in the case and has not contacted chambers.

FACTS

Cason Ford was born on September 18, 2001.

On October 22, 2009, Cason received H1N1 and seasonal flu vaccines. Med. recs. Ex. 1, at 3, 6.

On January 28, 2010, Dr. Zara Memon examined Cason during his visit to Comprehensive Medical Care, P.C. Cason complained of having pain for the past week after playing soccer. He had trouble bending over. Dr. Memon diagnosed Cason with a muscle strain. Med. recs. Ex. 1, at 5.

On January 31, 2010, Cason was taken to Parkridge East Emergency Room. Cason complained of experiencing back and leg pain for the past two weeks. Med. recs. Ex. 2, at 55, 57. He received lower extremity x-rays and had lab work performed, which was normal. Med. recs. Ex. 4, at 7. He also had a lumbar puncture, which was unsuccessful. Med. recs. Ex. 2, at 62; Ex. 4, at 9.

On February 4, 2010, Cason returned to Comprehensive Medical Care and complained of back pain, muscle pain for two weeks, falling down, being unable to walk, and a poor appetite. Dr. Memon noted that Cason had weakness bilaterally in his legs, decreased sensation below his thighs, and no reflexes in his knees and ankles. Dr. Memon diagnosed Cason with bilateral leg weakness and paresthesia. Dr. Memon sent Cason to TC Thompson Children's Hospital for a CT of his abdomen and neurological consultation. Med. recs. Ex. 1, at 4.

Cason was seen by Dr. Spencer E. Rodgers at TC Thompson Children's Hospital. Dr. Rodgers noted that the patient had no URI symptoms and did not complain of chest pain, palpitation, cough, congestion, vomiting, diarrhea, or pain on urination. The patient did complain of headaches, dizziness, and lower extremity muscle pain and muscle weakness. During the physical examination, Dr. Rodgers could not elicit a deep tendon reflex in the lower extremities, the patellar reflex, or the Achilles reflex. He could elicit a 2+ deep tendon reflex in the upper extremities. The patient had appropriate strength and sensation in his lower extremities. Dr. Rodgers recommended repeating a lumbar puncture. He noted that there was a concern for Guillain-Barré syndrome. Med. recs. Ex. 4, at 8–9.

On February 24, 2010, Cason returned to T.C. Thompson Children's Hospital for a follow up visit at the clinic. In his report, Dr. Paul D. Knowles, a pediatric neurologist, stated that he found significant abnormality in Cason's CSF, a protein of 230 with no cells, which was suggestive of GBS. Cason was put on IVIG and was doing better. At that time, he did not have a normal running gait. He also had reflexes which were 2+ throughout. Med. recs. Ex. 4, at 5.

On April 6, 2010, Cason had another clinic visit. Dr. Knowles noted that Cason's gait was significantly better. Med. recs. Ex. 4, at 3.

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.

Petitioners must show not only that but for the flu vaccine, Cason would not have had GBS, but also that the vaccine was a substantial factor in bringing about his alleged injury. Shyface v. Sec’y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

Since petitioners filed their petition two years ago, they have not provided evidence to make a prima facie case. Petitioners did file some of Cason’s medical records and their affidavits. However, petitioners have not produced an expert report supporting causation-in-fact, and no treating physician opined in the medical records that Cason’s GBS was caused by his seasonal flu vaccine. The undersigned cannot rule in petitioners’ favor based solely on their allegations. 42 U.S.C. § 300aa–13(a)(1).

Moreover, petitioners have failed to comply with court orders. Since December 13, 2011 when the undersigned last spoke with one of the petitioners, the undersigned has issued five orders, instructing petitioners to contact her chambers. Neither Ms. Woods nor Mr. Ford has called, and numerous attempts to reach either Ms. Woods or Mr. Ford have been unsuccessful. Finally, petitioners failed to respond to the undersigned’s May 3, 2012 Order to Show Cause in which the undersigned explicitly stated that petitioners’ case would be dismissed if they did not contact her chambers.

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.