

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

JADE W. BREWTON,

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Petitioner,

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No. 11-67V

Special Master Christian J. Moran

v.

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Filed: June 27, 2011

SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Petitioner’s motion for a decision
dismissing her petition; Vaccine
Act entitlement; insufficient
proof of causation.

Michele Dana Allen-Hart, Middleberg Riddle and Gianna, New Orleans, LA, for
petitioner;

Darryl R. Wishard, United States Dep’t of Justice, Washington, DC., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Jade W. Brewton filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., on February 1, 2011. Her petition alleged that she had an adverse reaction, including seizures and memory loss, resulting from the receipt of the human papillomavirus vaccine administered to her on February 12, 2008. The information in the record, however, does not show entitlement to an award under the Program.

I. Procedural History

¹ Because this unpublished decision contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the United States Court of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).

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 or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before 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 delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

On February 1, 2011, petitioner filed her initial medical records, along with her petition, as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A). Respondent requested additional records and petitioner was ordered to file any outstanding records by April 28, 2011. On this date, petitioner filed a status report indicating that she had produced all medical records available for the time period requested.

Respondent filed her responsive report, pursuant to Vaccine Rule 4, on May 25, 2011. Respondent stated that petitioner has provided insufficient evidence on causation under Althen and she recommended that entitlement be denied and that the petition be dismissed. See Resp't Rep't at 13.

On June 23, 2011, petitioner filed her motion for a decision dismissing her petition. In support of her motion, petitioner stated that an investigation of the facts and science supporting her case has demonstrated to petitioner that she will be unable to prove that she is entitled to compensation in the Vaccine Program. Further, petitioner stated that to proceed with her case would be unreasonable and would waste the resources of the court, respondent, and the Vaccine Program. Petitioner stated that she understands that a decision dismissing her petition will result in a judgment against her. Accordingly, petitioner requests that the undersigned dismiss her petition. Petitioner states that respondent does not oppose this motion. Pet'r Motion at 1-2.

II. Analysis

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), petitioner must prove either 1) that she suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that she suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that petitioner suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that her alleged injury was vaccine-caused.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records do not support petitioner's claim, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that she suffered a "Table Injury" or that her injuries were "actually

caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master