

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**OFFICE OF SPECIAL MASTERS**

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DEBRA CHUISANO, as Legal \*  
Representative of the Estate of \*  
FRANCES D’ESPOSITO, deceased, \*  
\*  
Petitioner, \*

No. 07-452V  
Special Master Christian J. Moran

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*  
\*  
Respondent. \*

Filed: May 18, 2011

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Robert T. Moxley, P.C., Robert T. Moxley, P.C., Cheyenne, WY, for petitioner;  
Glenn A. MacLeod, United States Dep’t of Justice, Washington, D.C., for  
respondent.

**UNPUBLISHED DECISION DENYING COMPENSATION<sup>1</sup>**

Debra Chuisano, as legal representative of the estate of Frances D’Esposito, filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., on June 28, 2007. Her petition alleged that Ms. D’Esposito died as a result of receiving a flu vaccination administered to her on October 12, 2004. The

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 Because this unpublished decision contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the United States Court of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

information in the record, however, does not show entitlement to an award under the Program.

## **I. Procedural History**

On November 26, 2007, petitioner filed her initial medical records, as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A). Petitioner was also ordered to file an amended petition. She filed this document along with her affidavit on January 14, 2008.

Respondent filed her report pursuant to Vaccine Rule 4(c) on May 30, 2008. This report concluded that compensation was not appropriate because petitioner had not satisfied the criteria for receiving compensation under the Vaccine Program. Resp't Rep't at 9.

Following respondent's report, petitioner's counsel tried to obtain an expert report. On November 16, 2009, a change in counsel took place. Petitioner's new counsel also attempted to seek a medical expert opinion; however, counsel was not successful. On May 16, 2011, petitioner filed her motion for a decision dismissing her petition.

## **II. Analysis**

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), petitioner must prove either 1) that Ms. D'Esposito 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 Ms. D'Esposito suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Ms. D'Esposito's 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 petitioners' 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 Ms. D’Esposito 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

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Christian J. Moran  
Special Master