

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

JOANNA H. RYDZEWSKI, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT *

OF HEALTH AND HUMAN SERVICES, *

Respondent. *

No. 99-571V
Special Master Christian J. Moran

Filed: January 29, 2008

PUBLISHED

Attorneys' fees and costs denied;
no reasonable basis for petition.

*Clifford J. Shoemaker, Shoemaker and Associates, Vienna, Virginia for petitioner;
Voris Johnson, United States Dep't of Justice, Washington, D.C. for respondent.*

DECISION DENYING ATTORNEYS' FEES AND COSTS*

Joanna Rydzewski requests an award for the attorneys' fees and costs incurred in unsuccessfully prosecuting her claim for compensation under the National Childhood Vaccine Injury Act ("the Act"), 42 U.S.C. §§ 300aa-1 et seq. (2006). Because Ms. Rydzewski lacked a reasonable basis for alleging she received a covered vaccine, her request is denied.

I. Facts and Procedural History

On September 5, 1995, Ms. Rydzewski was admitted to the Walter Reed Army Medical

* Pursuant to 42 U.S.C. § 300aa-12(d)(3)(A), this document constitutes a final "decision." Unless a motion for review is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision.

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 or designated substantive order is filed, petitioner 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 banned categories listed above, the special master shall delete such material from public access.

Center for a cardiac catheterization scheduled to be performed the following day. Exhibit 1 at 2-3. A cardiac catheterization is the entry of a tubular surgical instrument into the heart to detect abnormalities. Dorland's Illustrated Medical Dictionary (30th ed. 2003) at 308, 310.

During the cardiac catheterization, Ms. Rydzewski experienced an anaphylactic reaction. Exhibit 1 at 5-7, 11 and 37. Anaphylaxis is a severe reaction to an antigen that sometimes causes death due to cardiac arrest. Dorland's at 73.

The contemporaneously created medical records indicate that the anaphylaxis was due to the administration of "hexabrix contrast." Exhibit 1 at 7. Hexabrix is an agent that creates contrasts when used during arteriograms and other procedures. Exhibit 100 at 15; see also exhibit 1 at 12 (discussing the amount of contrast used during the catheterization). Severe reactions have been reported following the use of hexabrix. Exhibit 100 at 9-10.

Ms. Rydzewski did not have any long term consequences from the anaphylaxis. Exhibit 1 at 40. On September 11, 1995, she was discharged in excellent condition. Exhibit 1 at 39-41.

In her petition, Ms. Rydzewski asserted that on September 5, 1995, she received the hepatitis B vaccine. Petition ¶ 2 (second), filed August 4, 1999. Ms. Rydzewski did not identify a specific injury that was allegedly caused by the hepatitis B vaccine.

Before filing exhibits in this case, Ms. Rydzewski made two similar statements that she received the hepatitis B vaccination at Walter Reed Army Medical Center. First, she submitted a Vaccine Adverse Event Registry form to the National Vaccine Information Center on August 2, 1999. Exhibit 1 at 20. She stated that she received an experimental form of the hepatitis B vaccine that was being given to soldiers. Exhibit 1 at 21. She also maintained that she was in a coma for two days. Exhibit 1 at 23. She also complained that she suffered, among other things,

frequent headaches, migraine headaches, memory problems, and a loss of the ability to concentrate. Exhibit 1 at 24. In response to a request for “other comments,” Ms. Rydzewski stated that “I don’t think anyone even thought about a reaction to the Hep B shot instead they have blamed it all on the cath. procedure. It was easily written off and also because the so called doctors were [sergeants] only.” Exhibit 1 at 26.

In addition, Ms. Rydzewski sent a letter to Walter Reed requesting medical records on October 20, 1999. Exhibit 1 at 32. Ms. Rydzewski requested that Walter Reed supply her with information about any medications she received during her hospitalization in September 1995. Ms. Rydzewski wrote that “I was given a shot the night before which I [] believe [] was a HEP ‘B’ shot.” *Id.* (emphasis deleted). Although Walter Reed supplied medical records, which Ms. Rydzewski filed as exhibit 1, these records do not indicate that she received the hepatitis B vaccination.

Ms. Rydzewski filed her petition on August 4, 1999. When she filed her petition, she was acting *pro se*. She paid the filing fee when she filed her petition. Exhibit 1 at 18. Ms. Rydzewski did not file any medical records with her petition.

The special master to whom this case was originally assigned ordered Ms. Rydzewski to file medical records. Orders, dated September 7, 1999, and January 4, 2000. Ms. Rydzewski did not file any medical records in response.

On January 6, 2000, Clifford Shoemaker filed an appearance on behalf of Ms. Rydzewski. Mr. Shoemaker has acted as her counsel of record since this date.

On June 22, 2006, Ms. Rydzewski filed two exhibits. She also filed a motion for a judgment on the record. In this motion, Ms. Rydzewski conceded that she could not prove

“causation.” Pet’r Mot. Ms. Rydzewski also asserted that the special master should find that she established the “filing requirements.” Pet’r Proposed Order, submitted June 22, 2006.

On July 6, 2006, respondent filed its response to Ms. Rydzewski’s motion for judgment on the record. Respondent stated that Ms. Rydzewski “failed to establish jurisdiction . . . based on [the existing] record.” Resp’t Resp., filed July 6, 2006, at 2. Following a status conference, respondent filed a motion to dismiss for lack of jurisdiction on September 1, 2006, which developed the jurisdictional arguments. After the parties filed briefs, Ms. Rydzewski was given an additional opportunity to submit any evidence that supports her assertion that she received the hepatitis B vaccine. Order, dated January 19, 2007. Ms. Rydzewski did not submit additional material by the deadline.

On March 12, 2007, this court denied respondent’s motion to dismiss on the ground that jurisdiction does not require petitioners to prove that they received a covered vaccine. This court also granted Ms. Rydzewski’s motion for a ruling on record, and found that Ms. Rydzewski was not entitled to compensation because she had not proven she received the hepatitis B vaccine. Order, filed March 12, 2007, 2007 WL 949759. Pursuant to Vaccine Rule 11(a), the Clerk’s Office entered judgment in favor of respondent on April 30, 2007. This judgment was not appealed.

Ms. Rydzewski filed a motion seeking her attorneys’ fees and costs on September 19, 2007. Due to the inadequate presentation, Ms. Rydzewski was ordered to file a supplemental statement, which she did on November 16, 2007. Ms. Rydzewski seeks \$9,090.25 in fees and costs. Respondent filed its response. Because the time for Ms. Rydzewski’s reply has elapsed, the matter is ripe for decision.

II. Analysis

A. Law Regarding Availability Of Attorneys' Fees

Attorneys for petitioners whose cases are adjudicated on the merits can be paid only through the program. 42 U.S.C. § 300aa-15(e)(3) (stating “No attorney may charge any fee for services in connection with a petition filed under section 300aa-11 of this title which is in addition to any amount awarded as compensation by the special master or court under paragraph (1)”); see also Beck by Beck v. Sec’y of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).

In the Vaccine Program, when petitioners fail to establish that they are entitled to compensation, special masters enjoy discretion to award petitioners reasonable attorneys’ fees and costs. When compensation is not awarded,

the special master or court may award an amount of compensation to cover petitioner’s reasonable attorneys’ fees and other costs incurred in any proceeding on such petition if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought.

42 U.S.C. § 300aa-15(e)(1).

Section 15(e)(1) permits, but does not mandate, an award of attorneys’ fees and costs when an unsuccessful petitioner fulfills two requirements: specifically, that the petition was brought in good faith and that there was a reasonable basis for the claim. Saxton v. Sec’y of Health & Human Servs., 3 F.3d 1517, 1521 (Fed. Cir. 1993) (“If the petition for compensation is denied, the special master ‘may’ award reasonable fees and costs if the petition was brought in good faith and upon a reasonable basis; the statute clearly gives [a special master] discretion over

whether to make such an award.”) (citation omitted). For the reasons explained below, Ms. Rydzewski’s petition lacks a reasonable basis. Therefore, it is not necessary to resolve whether she brought her petition in good faith.

Consistent with the deference given to special masters to award attorneys’ fees and costs, the Federal Circuit reviews decisions awarding or denying attorneys’ fees to petitioners in the Vaccine Program under an abuse of discretion standard. Perreira v. Sec’y of Health & Human Servs., 33 F.3d 1375, 1377 (Fed. Cir. 1994).

Respondent maintains that Ms. Rydzewski has failed to show a reasonable basis for the petition. Respondent argues that no evidence, apart from Ms. Rydzewski’s own statements, corroborates her assertion that she received the hepatitis B vaccine. Respondent also notes that when the petition was filed, it did not comply with 42 U.S.C. § 300aa-13(a)(1). Resp’t Opp., filed December 6, 2007, at 6. Thus, respondent concludes that, considering all the facts of this case, Ms. Rydzewski is not entitled to any compensation because the petition lacked a reasonable basis.

Although the statute uses the phrase “reasonable basis,” that phrase is not defined in the statute. Pub. L. 99-600, 100 Stat. 3743 (1986). A review of the legislative history of the National Childhood Vaccine Injury Act has not revealed any insights as to the intention of Congress. However, Congress is presumed to use terms found in the common law in accord with their common law meaning. Beck v. Prupis, 529 U.S. 494, 500-01 (2000); N.L.R.B. v. Amax Coal Co., 453 U.S. 322, 329 (1981); Bohac v. Dep’t of Agriculture, 239 F.3d 1334, 1339 (Fed. Cir. 2001).

Both before and after Congress enacted the National Childhood Vaccine Injury Act, decisions from different contexts show that awarding or denying attorneys' fees authorized by statutes depends upon underlying facts and circumstances. Perricone v. Medicis Pharmaceutical Corp., 432 F.3d 1368, 1380 (Fed. Cir. 2005) (listing factors for a district court to consider pursuant to 35 U.S.C. § 285, which authorizes attorneys' fees to a prevailing party in an "exceptional" patent case); Smith v. Principi, 343 F.3d 1358, 1363 (Fed. Cir. 2003) (holding the determination of whether a position of the United States was "substantially justified" to preclude an award of attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, depends upon the "totality of the circumstances"); Dunn v. Dep't of Veterans Affairs, 98 F.3d 1308, 1312 (Fed. Cir. 1996) (listing non-exclusive factors to consider whether an award of attorneys' fees pursuant to 5 U.S.C. § 7701(g)(1) is "in the interest of justice."); S.C. Johnson & Son, Inc. v. Carter-Wallace, Inc., 781 F.2d 198, 201 (Fed. Cir. 1986) (35 U.S.C. § 285); Essex Electro Eng'rs, Inc. v. United States, 757 F.2d 247, 253 (Fed. Cir. 1985) (28 U.S.C. § 2412).

Consistent with these persuasive precedents, the evaluation of the reasonable basis of Ms. Rydzewski's petition will include the totality of the circumstances.

The totality of the circumstances can be divided into two distinct periods of time, divided by when Mr. Shoemaker entered his appearance for Ms. Rydzewski. Before Mr. Shoemaker was retained, Ms. Rydzewski incurred costs for a single item. After Mr. Shoemaker filed his notice of appearance, Ms. Rydzewski incurred both attorneys' fees and other costs.

B. Costs Incurred Before Attorney Representation

Ms. Rydzewski incurred a cost of \$120.00 for filing her petition. Pet'r Documentation, Exhibit 2. Ms. Rydzewski has not sought reimbursement for any of her time spent preparing her

petition while she was acting pro se. See Pickholtz v. Rainbow Technologies, Inc., 284 F.3d 1365, 1375 (Fed. Cir. 2002). Ms. Rydzewski is not entitled to reimbursement because her petition lacked a reasonable basis.

Ms. Rydzewski's petition lacked a reasonable basis because no evidence, except for her own questionable statements, supports a finding that she received the hepatitis B vaccine. Ms. Rydzewski may have confused her receipt of "hexabrix," the contrasting agent used during her cardiac catheterization, with "hepatitis B."

Regardless of when (or how) Ms. Rydzewski began to believe that she received the hepatitis B vaccine, Ms. Rydzewski should have attempted to substantiate her belief with corroborating evidence. Unlike typical litigation, petitioners in the Vaccine Program are expected to gather the documents that support their allegations before filing their petitions. In pertinent part, the Vaccine Act provides:

A petition for compensation under the Program for a vaccine-related injury or death shall contain —

(1) except as provided in paragraph (3), an affidavit, and supporting documentation, demonstrating that the person who suffered such injury or who died —

(A) received a vaccine set forth in the Vaccine Injury Table.

42 U.S.C. § 300aa-11(c). Vaccine Rule 2, in turn, reinforces the statutory directive. Vaccine Rule 2 states in pertinent part:

As required by 42 U.S.C. § 300aa-11(c), every petition shall be accompanied by the following:

(A) Medical records and detailed affidavit(s) supporting all elements of the allegations made in the petition. . . .

(B) All available physician and hospital records relating to (i) the vaccination itself.

Vaccine Rule 2(e).

Ms. Rydzewski's own statements are not persuasive in establishing a reasonable basis for asserting that she received the hepatitis B vaccine. The accuracy of Ms. Rydzewski's statements is questionable on their face. For example she presented a Vaccine Adverse Event Registry form to the National Vaccine Information Center on August 2, 1999. Exhibit 1 at 20. She stated that she received an experimental form of the hepatitis B vaccine that was being given to soldiers. Exhibit 1 at 21. She also maintained that she was in a coma for two days. Exhibit 1 at 23. The undersigned special master is not aware of any experimental forms of the hepatitis B vaccine. The records from Walter Reed also do not show that Ms. Rydzewski was in a coma. Exhibit 1 at 39-41. These errors call into question whether Ms. Rydzewski made another mistake when she asserted that she received the hepatitis B vaccine.

Ms. Rydzewski's second statement also is not persuasive. When requesting that Walter Reed supply her with information about any medications she received during her hospitalization in September 1995, Ms. Rydzewski wrote that "I was given a shot the night before which I [] believe [] was a HEP 'B' shot." Exhibit 1 at 32 (emphasis deleted). Ms. Rydzewski's use of the term "I believe" suggests that she is less than certain that she received the hepatitis B vaccine.

In her attempt to demonstrate that her petition had a reasonable basis, Ms. Rydzewski cites her two statements and Campbell v. Sec'y of Health & Human Servs., 69 Fed. Cl. 775, 779-80 (2006). Ms. Rydzewski seems to be implying, although she does not actually argue, that Ms. Rydzewski was entitled to have a hearing at which she would have testified to explain the basis for her belief that she received the hepatitis B vaccine.

Any argument based upon a lack of a hearing is untenable. Ms. Rydzewski did not request a hearing. This lack of a request effectively waives any right to a hearing. (However, Ms. Rydzewski does not possess a right to demand a hearing.) The context of Ms. Rydzewski's decision not to request a hearing is important. Respondent's motion to dismiss for lack of jurisdiction had argued that Ms. Rydzewski failed to prove that she received a vaccination. If respondent had prevailed on the motion to dismiss, then Ms. Rydzewski could not have sought reimbursement for attorneys' fees because a lack of jurisdiction means that petitioners cannot receive any compensation for attorneys' fees. Brice v. Sec'y of Health & Human Servs., 358 F.3d 865 (Fed. Cir. 2004). When facing such a challenge, Ms. Rydzewski had every reason to put forth her best case. Her failure to request a hearing under these circumstances strongly implies that Ms. Rydzewski saw no advantage in requesting a hearing.

Moreover, as mentioned parenthetically, even if Ms. Rydzewski had requested a hearing, she was not entitled to such a hearing as a matter of right. The decision to conduct a hearing is at the discretion of the special master. Burns v. Sec'y of Health & Human Servs., 3 F.3d 415, 417 (Fed. Cir. 1993) (affirming special master's decision denying petitioners' request for an evidentiary hearing); Hovey v. Sec'y of Health & Human Servs., 38 Fed. Cl. 397, 400-01 (1997) (same). Before ruling on respondent's motion to dismiss and Ms. Rydzewski's motion for judgment on the record, the undersigned special master specifically extended Ms. Rydzewski an opportunity to supply additional information, by affidavit, to substantiate her assertion that she received the hepatitis B vaccine. In essence, this order requested Ms. Rydzewski to explain the context of her assertion that she received the hepatitis B vaccine. Ms. Rydzewski was also specifically afforded a second opportunity to subpoena records from Walter Reed. Order, filed

January 19, 2007. Ms. Rydzewski neither filed an affidavit nor requested a hearing at which she could present information orally. Thus, holding an evidentiary hearing would have been pointless because Ms. Rydzewski was either unwilling or unable to add to the written record. See Hovey, 38 Fed. Cl. at 401 (stating “After reviewing the record, the special master could reasonably conclude that there is nothing a witness could testify to at an evidentiary hearing that would affect the outcome of the case. Thus, the special master acted within his discretion in denying the evidentiary hearing.”); cf. Cedars-Sinai Med. Ctr. v. Watkins, 11 F.3d 1573, 1584-85 (Fed. Cir. 1993) (affirming district court’s dismissal of lawsuit because affidavits did not support allegation of jurisdiction).

To support her argument that her own statement that she received the hepatitis B vaccine may be sufficient to establish a reasonable basis for her petition, Ms. Rydzewski cites Groht v. Sec’y of Health & Human Servs., No. 00-287V, 2006 WL 3342222 (Fed. Cl. Spec. Mstr. Oct. 30, 2006). Pet’r Resp., filed Nov. 16, 2007, at 4 n.2. In Groht, the special master accepted, as reliable, Ms. Groht’s statement to a treating doctor that she previously received the hepatitis B vaccine. The special master provided two reasons for accepting this statement. First, the statement was given before litigation commenced. Second, Ms. Groht’s statement was given to a treating doctor and, therefore, more likely to be accurate because it could be the basis for medical treatment. Neither of these factors is present here. Thus, Groht is easily distinguishable from Ms. Rydzewski’s case.

Ms. Rydzewski’s case also differs fundamentally from cases in which petitioners have established, by a preponderance of the evidence, that they received a vaccine despite not presenting documents created contemporaneously with the vaccination. In these cases,

petitioners have supported their assertions with circumstantial evidence of the vaccination. See, e.g., Centmehaiey v. Sec’y of Health & Human Servs., 32 Fed. Cl. 612, 623-24 (collecting cases), aff’d, 73 F.3d 381 (Fed. Cir. 1995) (table). Likewise, in an appropriate case, circumstantial evidence of vaccination could establish the reasonable basis for an assertion that a petitioner received a covered vaccine. However, here, Ms. Rydzewski has not presented any circumstantial evidence supporting a claim of vaccination.

In finding that Ms. Rydzewski lacked a reasonable basis to file her petition, her status as a pro se litigant has been considered. Although Ms. Rydzewski’s status as a pro se accorded her some latitude in filing a petition, her lack of legal training did not eliminate the requirement that petitions have some basis. Finch v. Hughes Aircraft Co., 926 F.2d 1574, 1582 (Fed. Cir. 1991) (stating “a finding of frivolity [is not] precluded by the fact that [appellant] appealed pro se. . . . this and other circuits have imposed sanctions in cases where even a non-lawyer should have been aware that his conduct was frivolous”). Both section 11(c) of the Act and Vaccine Rule 2 alert Ms. Rydzewski of the need to substantiate her allegations before filing her petition. When she acted without this substantiation, she risked the chance that her costs would not be reimbursed.

A preponderance of the evidence does not support a finding that Ms. Rydzewski received the hepatitis B vaccine. The evidence supporting this assertion is so slight that the evidence does not support even a finding that Ms. Rydzewski possessed a reasonable basis to think that she received the hepatitis B vaccine. Without this reasonable basis, Ms. Rydzewski should not have filed the petition. Therefore, her application to be reimbursed her costs of \$120.00 is denied.

C. Costs Incurred After Attorney Representation

From the finding that Ms. Rydzewski lacked a reasonable basis in filing the petition, it follows that Ms. Rydzewski (and her attorney) lacked a reasonable basis to prosecute her case. However, the lack of a reasonable basis is more evident.

The attorneys' time sheets show that the attorney began corresponding with Ms. Rydzewski on August 20, 1999. Pet'r Documentation, Tab 3, at 1. By this date, Ms. Rydzewski had filed her petition. In September, October, and November, Ms. Rydzewski had additional discussions with her attorney. The attorney's description indicates that one discussion was about "missing medical records." Another entry from November indicates that the attorneys had received records from Ms. Rydzewski. Id.

When Ms. Rydzewski was consulting with these attorneys, Ms. Rydzewski was already obligated to provide evidence to establish that she received the hepatitis B vaccine. The Vaccine Act, itself, states that a "petition . . . shall contain . . . an affidavit, and supporting documentation, demonstrating that the person . . . received a vaccine." 42 U.S.C. § 300aa-11(c)(1)(A). When Ms. Rydzewski failed to comply with this requirement, the special master to whom the case was assigned issued an order directing her to file missing medical records. Order, dated September 7, 1999.

Ms. Rydzewski's attorneys, therefore, must have known that Ms. Rydzewski was required to establish that she received the hepatitis B vaccine. Receipt of a covered vaccine is an indispensable part of the Vaccine Program. The information that Ms. Rydzewski provided to her attorney could not have indicated that she received the hepatitis B vaccine. Under these circumstances, there was no basis for the attorney to begin representing Ms. Rydzewski.

It is emphasized that Ms. Rydzewski consulted her attorneys after she filed her petition. Thus, the statute of limitations was not an issue. Ms. Rydzewski's attorneys were not required to agree to represent her immediately to file a petition to preserve a claim. The petition was already filed. Thus, Ms. Rydzewski's attorney had an opportunity to review whether Ms. Rydzewski received the hepatitis B vaccine. When the statute of limitations for filing a petition is close to expiring, attorneys must act quickly and, therefore, are given latitude when the reasonable basis is determined. Turner v. Sec'y of Health & Human Servs., No. 99-544V, 2007 WL 4410030 (Fed. Cl. Spec. Mstr. Nov. 30, 2007); Hamrick v. Sec'y of Health and Human Servcs., No. 99-683V, 2007 WL 4793152 (Fed. Cl. Spec. Mstr. Nov. 19, 2007). But, it bears repeating, that this factor was not present here.

Ms. Rydzewski's attorneys have not argued that they agreed to represent her so that they could assist her in gathering evidence to support her assertion that she received the hepatitis B vaccine. Such an argument would not be appropriate because the facts would not support it. The attorney time sheets show that the attorneys spent more than 30 hours on this case. However, at most, only about 3.5 hours in May and June 2000, and 2 hours in February to March 2004 were devoted to obtaining medical records. No entry specifically indicates that Ms. Rydzewski's counsel issued a subpoena to Walter Reed to obtain her medical records. If counsel had worked diligently to substantiate Ms. Rydzewski's allegation, then counsel could have avoided many unproductive (and unreimbursed) hours by resolving the case immediately after the absence of proof became apparent. See Perreira v. Sec'y of Health & Human Servs., 27 Fed. Cl. 29, 35 (Fed. Cl. 1992) (stating "While an attorney has an ethical obligation to be a zealous advocate for the client's cause, this does not mean that an attorney has license to proceed with a frivolous case

on behalf of the client.”), aff’d, 33 F.3d 1375, 1377 (Fed. Cir. 1994).

In short, Ms. Rydzewski’s attorney had an opportunity to obtain more information from Ms. Rydzewski regarding her vaccination before agreeing to represent her. Ms. Rydzewski’s attorney did not do so. Instead, he prosecuted this action without having persuasive evidence to establish the most basic of elements – that Ms. Rydzewski received a covered vaccine.

Decisions from other special masters are in accord with the result reached here. Brown v. Sec’y of Health & Human Servs., No. 99-539V, 2005 WL 1026713 (Fed. Cl. Spec. Mstr. Mar. 11, 2005) (finding that a petition alleging an illness due to the hepatitis B vaccination lacked a reasonable basis when, among other things, medical records to document the vaccination were not filed); Di Roma v. Sec’y of Health & Human Servs., No. 90-3277V, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993) (denying request for fees because a proper investigation would have shown no reasonable basis for petitioner’s claim); McCabe v. Sec’y of Health & Human Servs., No. 91-1540V, 1993 WL 135860 (Fed. Cl. Spec. Mstr. Apr. 15, 1993) (stating “it is . . . reasonable to put on [petitioners] the risk of not being compensated for attorneys' fees and costs if they file a petition without the necessary supporting documentation and are later unable to produce such documentation.”).

III. Conclusion

Ms. Rydzewski’s case is a rare case in which a petitioner has failed to establish a reasonable basis for the petition. Her assertion that she received the hepatitis B vaccine was not supported from the beginning of the case. Despite being given several opportunities to develop corroborating circumstantial evidence to prove her assertion, Ms. Rydzewski has not.

Consequently, Ms. Rydzewski’s application for fees and costs is DENIED. Unless a

motion for review is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master