

OFFICE OF SPECIAL MASTERS

No. 06-003V

June 12, 2006

ELIZABETH BABCOCK, *

*

Petitioner, *

*

v. * Hepatitis A & B vaccinations;

*

hypersensitivity reaction (TM,

SECRETARY OF THE DEPARTMENT OF * aseptic meningitis, arthritis)

*

HEALTH AND HUMAN SERVICES, *

*

Respondent. *

*

ORDER TO SHOW CAUSE¹

Petitioner filed a petition on January 3, 2006 under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., on her own behalf, ultimately alleging that hepatitis A and B vaccinations administered on January 9, 2003 caused her transverse myelitis (TM) and aseptic meningitis.² The undersigned has recently concluded the hepatitis B-demyelinating

¹ Because this order to show cause contains a reasoned explanation for the special master's action in this case, the special master intends to post this order to show cause 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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete 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 delete such material from public access.

² The records of Dr. Panting and Dr. DeVita also ascribe arthritis to the vaccinations.

diseases Omnibus proceedings, ruling that hepatitis B vaccine can cause TM, GBS, CIDP, and MS. In Stevens v. Secretary of HHS, No. 99-594V, 2006 WL 659525 (Fed. Cl. Spec. Mstr. Feb. 24, 2006), the undersigned ruled that hepatitis B vaccine caused petitioner's TM.

The undersigned ORDERS respondent to SHOW CAUSE why petitioner shall not prevail by July 24, 2006 and this case go into damages.

FACTS

Petitioner was born on January 3, 1958. She received hepatitis A and B vaccines on January 9, 2003. Two weeks later, according to notes taken by Dr. Jennifer Brown, petitioner had bilateral posterior occiput and bilateral temporal headache and stiff neck, aching bilateral wrist and ankle joints without swelling and redness, and a low-grade fever of about 99° Fahrenheit. Med. recs. at Ex. J, p. 534. One week later, she had a severe sore throat which was negative for strep. *Id.* On February 8, 2003, her headache became more severe and her eyes became painful bilaterally, but she did not have photophobia. Her neck was painful when she turned her head. *Id.* On February 11, 2003, she was unable to urinate. *Id.*

On February 13, 2003, petitioner had an MRI of her brain with gadolinium, showing right frontal opercular T2 white matter signal abnormality with mild enhancement consistent with an infectious or inflammatory etiology such as early cerebritis. Med. recs. at Ex. J, p. 732.

An MRI of petitioner's brain with gadolinium done on February 20, 2003 was normal. Med. recs. at Ex. J, p. 730.

On August 14, 2003, Dr. Normal Panting, as part of a workmen's compensation evaluation, diagnosed petitioner with hypersensitivity reaction with meningitis, TM, arthritis, and neuropathy secondary to hepatitis A and B vaccinations. The onset of her illness was January 21,

2003, 12 days after vaccinations. Petitioner had an affective disorder (depression) secondary to her reaction. Med. recs. at Ex. B, pp. 1, 6. Petitioner had a non-contagious form of meningitis, and there were no cases of meningitis seen at San Quentin Prison where petitioner worked. Med. recs. at Ex. B, p. 7.

On April 1, 2005, Dr. Edward DeVita, a neurologist, also as part of a workmen's compensation evaluation, diagnosed petitioner with aseptic hypersensitivity meningitis with associated TM, neuropathy with associated neurogenic bladder, and arthritis and associated headaches. Med. recs. at Ex. H, p. 1. He stated, "It is my opinion that her hypersensitivity post hepatitis A and B vaccinations is resultant from her employment." Med. recs. at Ex. H, p. 6.

DISCUSSION

This is a causation in fact case. To satisfy her burden of proving causation in fact, petitioner must offer "(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. Secretary of HHS, 418 F. 3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary 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[.]"

In Capizzano v. Secretary of HHS, 440 F.3d 1274, 1325 (Fed. Cir. 2006), the Federal Circuit said "we conclude that requiring either epidemiologic studies, rechallenge, the presence of pathological markers or genetic disposition, or general acceptance in the scientific or medical

communities to establish a logical sequence of cause and effect is contrary to what we said in Althen....”

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, supra, at 1149. Mere temporal association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6th Cir. 1983), cert. denied, 469 U.S. 817 (1984).

Petitioner must show not only that but for the vaccines, she would not have had TM, aseptic meningitis, and arthritis, but also that the vaccines were a substantial factor in bringing about her TM, aseptic meningitis, and arthritis. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

One of the three Althen criteria petitioner must satisfy is a that there was a medically-appropriate temporal relationship between her vaccinations and illness. The undersigned has already described in Stevens that a few weeks is the appropriate temporal relationship between vaccination and TM. Here, onset was 12 days, a medically-appropriate temporal relationship.

The Federal Circuit in Capizzano, supra, at 1326, emphasized the opinions of petitioner's four treating doctors in that case that hepatitis B vaccine caused petitioner's rheumatoid arthritis. Here, two of petitioner's doctors evaluating her for workmen's compensation diagnosed her with TM, aseptic meningitis, and arthritis secondary to hepatitis A and B vaccinations.

These two doctors' medical theory is that petitioner was hypersensitive to the vaccinations, which manifested in aseptic meningitis, TM, and arthritis, with depression secondary to the first three illnesses.

Respondent is ORDERED TO SHOW CAUSE why petitioner should not prevail in this case by July 24, 2006 and this case go into damages.

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master