

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-463V

November 13, 2006

TIMOTHY JAMES CARPENTER, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Both MS and cancer onsets predate hepatitis B vaccinations; no sign of significant aggravation

ORDER TO SHOW CAUSE

Petitioner filed a petition on July 16, 1999 under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., alleging that he suffered an unspecified adverse reaction to hepatitis B vaccine received on March 29, 1994, April 29, 1994, and September 29, 1994.

Petitioner has not filed any medical records for 1994 that the undersigned could find. Petitioner filed vaccination records showing hepatitis immunizations dated March 29, 1994, April 29, 1994, and September 29, 1994. P. Ex. 12.

Petitioner has filed voluminous medical records dating from 1974 to 2001 (excluding 1994). Among those records is petitioner's belief that receipt of Heptavax vaccine caused him to have multiple sclerosis (MS). Med. recs. at Ex. 8, p. 21. The undersigned presumes that petitioner alleges that MS is his adverse reaction to hepatitis B vaccine.

Petitioner's grandmother had leukemia. Med. recs. at Ex. 1, p. 26.

Petitioner had the MS symptom of optic neuritis on December 19, 1991 when petitioner suddenly lost sight in his left eye. Med. recs. at Ex. 1, p. 35. Petitioner's father had optic neuritis. Petitioner developed optic neuritis in his right eye in August 1996, approximately two years after receiving hepatitis B vaccine. Med. recs. at Ex. 9, p. 1. Petitioner has no other neurological evidence of MS, although he alleges weakness with a flare up of MS. Id. Petitioner's MS worsened during the initial phases of his bone marrow transplant. Med. recs. at Ex. 9, p. 26.

Petitioner was a heavy smoker and drinker, and suffered flash burns to his eyes secondary to arc welding (keratitis) while on active duty as a Marine. Med. recs. at Ex. 1, p. 124. He was exposed to asbestos dust debris in 1986 and to isocyanates polyurethane paints, naphtha, paint stripper, silica dust, sanding dust, fiberglass dust, glue and hardeners for eight hours a day in 1991. Med. recs. at Ex. 1, pp. 68, 281. He has had hypothyroidism, longstanding back pain, hypercholesterolemia, and varicella pneumonia.

Petitioner was diagnosed with MS on April 6, 1992, although he probably had had MS since 1990. Med. recs. at Ex. 1, pp. 28, 538. At an ophthalmology examination on May 14, 1992, petitioner complained of having a bilateral headache for three months, and decreased cognition function manifested in reading and memory for the past year. Med. recs. at Ex. 1, p. 22.

Petitioner was diagnosed with CML on October 24, 1995. Med. recs. at Ex. 3, pp. 2, 3. He had a positive Philadelphia chromosome.¹ Med. recs. at Ex. 3, p. 18. Dr. Kenneth S. Wurz opined on June 18, 1996 that the onset of petitioner's CML was the end of 1992 because of the history of petitioner's disturbed vision and elevated white count. Med. recs. at Ex. 3, p. 42.

Dr. David D. Hurd opined on June 21, 1996 that petitioner had symptoms of CML for one year prior to diagnosis or October 1994, but it was "quite likely" that he had CML for one to two years before he had onset of symptoms, prior to January 1993. Med. recs. at Ex. 4, p. 432.

The undersigned cannot possibly hold that petitioner's MS began after his alleged hepatitis B vaccinations. Therefore, unless petitioner is alleging that the vaccine caused his CML, which also began before his inoculations, the undersigned assumes petitioner is alleging that hepatitis B vaccine significantly aggravated his pre-existing MS. Considering that the medical records filed do not substantiate a significant aggravation, other than a substantial worsening during bone marrow transplant to treat his CML, and petitioner has provided no medical records whatsoever for 1994 or an expert medical report in support of his assumed allegations, petitioner does not seem able to make a prima facie case.

Petitioner is ORDERED TO SHOW CAUSE by January 19, 2007 why this case should not be dismissed.

¹ The Philadelphia chromosome "was the first chromosome abnormality ever found to be associated with a specific cancer...." [Http://plan.cancer.gov/infra/sod.htm](http://plan.cancer.gov/infra/sod.htm). "In most cases of CML, the leukemic cells share a chromosome abnormality not found in any nonleukemic white blood cells, nor in any other cells of the patient's body. This abnormality is a reciprocal translocation between one chromosome 9 and one chromosome 22. This translocation is designated t(9;22). It results in one chromosome 9 longer than normal and one chromosome 22 shorter than normal. The latter is called the Philadelphia chromosome and designated Ph1." [Http://www.ultranet.com/~jkimball/BiologyPages/C/CML.html](http://www.ultranet.com/~jkimball/BiologyPages/C/CML.html).

IT IS SO ORDERED.

November 13, 2006
DATE

s/Laura D. Millman
Laura D. Millman
Special Master