

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-178V

January 22, 2010

Not to be Published

JEREMY COE,

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Petitioner,

*

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v.

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Entitlement: motion to

dismiss; hepatitis A

vaccine; hives; no expert;

ruling on the record

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SECRETARY OF THE DEPARTMENT OF

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HEALTH AND HUMAN SERVICES,

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Respondent.

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William E. Gast, Omaha, NE, for petitioner.

Michael P. Milmoe, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 is filed, the parties have 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.

Petitioner filed a petition on March 12, 2009 under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that hepatitis A vaccine caused chronic urticaria or hives.

The undersigned and the parties held telephonic status conferences on June 8, 2009, August 25, 2009, December 17, 2009, and January 6, 2010. During this time, petitioner's counsel endeavored to find expert medical support for his client's allegations, but was unsuccessful.

On December 17, 2009, petitioner filed a Notice to Court and Counsel Regarding Petitioner's Expert Report, stating that there was no testing available to prove that hepatitis A vaccine caused petitioner's urticaria.

On January 6, 2010, the undersigned asked petitioner's counsel during a telephonic status conference with the parties if petitioner were proceeding with the case and he responded that petitioner moved to dismiss. The undersigned grants petitioner's motion.

FACTS

Petitioner was born on December 15, 1975.

On April 3, 2006, he received hepatitis A vaccine. Med. recs. at Ex. 2, p. 10.

On April 11, 2006, petitioner saw a doctor, stating that he had had a rash intermittently for the last couple of days (which would put onset six days after vaccination). The blotchy welts were quite itchy, but had mainly cleared up. The diagnosis was urticaria. Med. recs. at Ex. 2, p. 10.

On May 10, 2006, petitioner saw a doctor, complaining about hives which occurred only at night, although initially they occurred all day long. He thought they started after he received hepatitis A vaccine. Med. recs. at Ex. 2, p. 11.

On May 17, 2006, petitioner saw Dr. Hershel E. Stoller, a dermatologist, complaining of hives for two months that started after a hepatitis shot. Med. recs. at Ex. 2, p. 18.

On November 26, 2007, petitioner phoned a Dr. Bigler, wanting to know about hepatitis A vaccine. Dr. Bigler said it was unlikely that the hepatitis A vaccine was causing petitioner's problem. Med. recs. at Ex. 4, p. 25.

On November 27, 2007, petitioner went to Memorial Hospital emergency room, stating his first episode of hives was one to two days after his hepatitis A vaccination. Med. recs. at Ex. 6, p. 29. However, he told Dr. Van E. Vahle on the same date that the onset of his hives occurred seven to eight days after his hepatitis A vaccination. Med. recs. at Ex. 6, p. 31. Dr. Vahle diagnosed petitioner with extensive urticaria of unknown etiology, resembling a probable massasystosis/angioneurotic edema. *Id.*

DISCUSSION

To satisfy his burden of proving causation in fact, petitioner must prove by preponderant evidence "(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[.]”

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, supra, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. *Id.* at 1148.

Petitioner must show not only that but for the hepatitis A vaccine, he would not have had hives, but also that the vaccine was a substantial factor in bringing about his hives. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

In the instant action, however, petitioner was not able to provide an expert opinion to satisfy the three Althen prongs. Recognizing the weakness in his case, petitioner moved through his counsel to dismiss the case. The undersigned grants his motion.

Petitioner has failed to make a prima facie case that hepatitis A vaccine caused his hives.

CONCLUSION

Petitioner's petition is dismissed with prejudice. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance herewith.²

IT IS SO ORDERED.

January 22, 2010
DATE

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

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.