

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. [redacted]

Originally issued [redacted] 2007

Not to be Published

JANE DOE,

*

*

Petitioner,

*

*

v.

*

Entitlement; tetanus vaccine

and obesity and depression;

no proof of more than six months

of vaccine injury

SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

*

*

*

Respondent.

*

Sherry K. Drew, Chicago, IL, for petitioner.

Lisa A. Watts, 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¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 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. On April 27, 2007, petitioner so moved, the undersigned granted her motion, and posts the Order now in redacted form.

On July 6, 2006, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10, et seq., alleging that tetanus vaccine on July 8, 2003 caused her body pain and stiffness followed by chronic illness including pain.

Petitioner subsequently alleged that the tetanus vaccine caused her obesity and depression.

During a status conference held on April 15, 2007, petitioner's counsel stated that her client was dismissing her petition.

FACTS

Petitioner was born on April 29, 1969.

On July 8, 2003, she put her hand in a machine that she was operating, causing pain in her right ring finger. Med. recs. at Ex. 4, p. 8. She received a tetanus/diphtheria vaccination that day. Med. recs. at Ex. 4, p. 11.

On July 10, 2003, petitioner saw Dr. John Brasel, complaining of generalized symptoms that began the night before, continuing that day: generalized aching, some nausea and anorexia, and a slightly swollen injection site. Petitioner denied abdominal pain, rash, chills, bowel symptoms, or fever. Med. recs. at Ex. 4, p. 13.

On July 11, 2003, petitioner saw the doctor. She had myalgias and an adverse reaction to the tetanus toxoid. She weighed 153 pounds. Med. recs. at Ex. 5, p. 1.

On July 17, 2003, petitioner returned to the doctor well-healed and with no complaints. Med. recs. at Ex. 4, p. 15.

On July 25, 2003, petitioner complained of continuing body aches, two weeks of headaches, and diffuse myalgias. She weighed 154 pounds. Med. recs. at Ex. 5, p. 2.

On August 5, 2003, petitioner saw Dr. Angelos Koutsonikolis, an allergist. She had a possible reaction to vaccine although no fever. Med. recs. at Ex. 6, p. 1.

On August 6, 2003, petitioner said her symptoms had improved modestly. Dr. Koutsonikolis diagnosed an allergic reaction. She had myalgias, headaches, back pain, and tremors. She weighed 156 pounds. Med. recs. at Ex. 5, pp. 4, 5.

On August 25, 2003, petitioner saw the doctor. She had myalgias and vertigo. Her symptoms were slowly improving. She weighed 154 pounds. Med. recs. at Ex. 5, p. 6. Her shakiness felt worse. Her headaches were less frequent and her fatigue and weakness improved. She fell four to five times since her last visit. Med. recs. at Ex. 5, p. 7.

On September 29, 2003, petitioner weighed 159 pounds. Med. recs. at Ex. 5, p. 8.

On September 9, 2003, petitioner said that symptoms were diffuse in her right arm where the injection site was and it was very painful. Med. recs. at Ex. 5, p. 10.

On October 9, 2003, petitioner had a workmen's compensation evaluation. She had pain in her joints and muscles, but no swelling or rash. Dr. Glennon H. Paul's impression was that she had allergic rhinitis, hyperactive airway disease, and chronic sinusitis. Med. recs. at Ex. 7, pp. 1, 2. He wrote: "This patient has no symptomatology of any reaction related to a tetanus shot. She has no symptomatology of any collagen, vascular diseases or autoimmune disease or serum sickness reaction that might be associated with a tetanus shot." Med. recs. at Ex. 7, pp. 2, 3. On physical examination, petitioner had no focal weakness or gross sensory deficit. Med. recs. at Ex. 7, p. 3.

On October 20, 2003, petitioner weighed 161 pounds. Med. recs. at Ex. 5, p. 12.

On November 19, 2003, petitioner weighed 162 pounds. Med. recs. at Ex. 5, p. 14.

On January 19, 2004, workmen's compensation refused to pay for petitioner to have an electromyography and nerve conduction studies. Med. recs. at Ex. 5, p. 17.

On March 19, 2004, petitioner weighed 180 pounds. *Id.*

On April 1, 2004, petitioner complained of right leg numbness and hips hurting. Med. recs. at Ex. 5, p. 21.

On July 19, 2004, petitioner weighed 167 pounds. Med. recs. at Ex. 5, p. 24.

On November 15, 2006, Dr. John Lanciloti wrote a "To whom it may concern" letter, stating that the tetanus vaccine caused petitioner's progressive obesity and morbid depression. He did not give a basis and did not furnish a curriculum vitae. Med. recs. at Ex. 5, p. 1. He also attributed petitioner's severe myalgias, stiffness, and headaches to the vaccine. *Id.*

DISCUSSION

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[.]"

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 vaccine, she would not have had the injury, but also that the vaccine was a substantial factor in bringing about her injury. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

The Vaccine Act also requires that if petitioner had a vaccine injury, the injury or its sequelae lasted more than six months. 42 U.S.C. §11-(c)((1)(D)(i).

Even if petitioner's myalgias and headaches were due to the tetanus vaccine, there is no credible evidence that she had these symptoms for more than six months. On October 9, 2003, Dr. Glennon H. Paul found petitioner had no symptomatology of any reaction related to a tetanus vaccination on July 8, 2003, three months earlier. He physically examined her and found no focal weakness or gross sensory deficit.

Petitioner has failed to provide a medical theory of causation through Dr. Lanciloti who did not give a basis for relating petitioner's obesity and depression to her vaccination.

Moreover, Dr. Lanciloti's attributing myalgias and headaches to petitioner's tetanus vaccination is contrary to the physical examination and evaluation by Dr. Paul.

On July 17, 2003, a medical record notes that petitioner was well-healed and had no complaints.

Petitioner has failed to prove a prima facie case of causation in fact. Moreover, petitioner has requested that the undersigned dismiss this petition.

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.

DATE

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.