

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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PATRICIA GIBBONS,

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No. 08-560V

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Special Master Christian J. Moran

Petitioner,

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v.

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Filed: May 7, 2010

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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entitlement, hepatitis B vaccine,  
headaches and dizziness

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Respondent.

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UNPUBLISHED DECISION<sup>1</sup>

On August 5, 2008, Ms. Gibbons filed a petition seeking compensation under the National Vaccine Injury Compensation Program. Ms. Gibbons alleged that a hepatitis B vaccination caused her to suffer from neurological problems including headaches and dizziness. The information in the record, however, does not show entitlement to an award under the Program.

To receive compensation under the Program, a petitioner must prove either: 1) she suffered a “Table Injury” - i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of her medical problems were actually caused by the vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the filed medical records, however, did not uncover any evidence that Ms.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Gibbons suffered a “Table Injury.” Thus, by process of elimination, Ms. Gibbons must establish that the vaccine caused her injury.

To establish that the vaccine caused her injury, Ms. Gibbons bears the burden of presenting preponderant evidence. Under the statute, a petitioner may not be given a Program award based solely on the petitioner’s claims alone. Rather, the petition must be supported either by the medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioner’s claims, a medical opinion must be offered in support. Ms. Gibbons, however, offered no such opinion.

Ms. Gibbons has been given an opportunity to present additional evidence to support her opinion. In a status conference held on January 14, 2010, Ms. Gibbons indicated that she did not intend to file additional evidence. Therefore, the written record will be the basis for this decision. See Vaccine Rule 8(d).

Under the law, compensation may be awarded only when a medical condition either falls within one of the “Table Injury” categories, or is shown by competent medical opinion to be vaccine-caused. No such proof exists in the record. Accordingly, it is clear from the record that Ms. Gibbons has failed to demonstrate either that she suffered a “Table Injury” or that her condition was “actually caused” by a vaccination.

Therefore, the only remaining alternative is to DENY this petition. In the absence of a motion for review, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

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Christian J. Moran  
Special Master