

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

FRANK C. PICCIOTTI,

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Petitioner,

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No. 99-506V

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Special Master Christian J. Moran

v.

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Filed: September 11, 2009

SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Reissued: September 30, 2009

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Petitioner's Motion for a Decision

Respondent.

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Dismissing his Petition; Insufficient

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Proof of Causation, Vaccine Act

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Entitlement; Denial Without

Hearing.

Clifford J. Shoemaker, Shoemaker & Associates, Vienna, VA, for petitioner;

Heather L. Pearlman, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION GRANTING PETITIONER'S MOTION TO DISMISS*

On July 26, 1999, Frank Picciotti filed a petition pursuant to the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-1 et seq., seeking compensation for injuries he alleges were caused by his receipt of the hepatitis B vaccine. The information in the record, however, does not show entitlement to an award under the Program.

While this case was pending, counsel for Mr. Picciotti, who also represented other petitioners who claimed that the hepatitis B vaccine caused them an injury, and counsel for

* When the decision was issued on September 11, 2009, the parties were informed that they could request redactions pursuant to Vaccine Rule 18(b). Mr. Picciotti filed a motion to redact. However, that motion was denied.

Consequently, this decision is being made available to the public. The only change is the content of this footnote.

respondent attempted to establish a structure for resolving the many cases involving the hepatitis B vaccine. Despite good faith efforts over several years, this attempt was not successful.

This case was re-assigned in 2006, and a stay was lifted. Since its re-assignment, this case generally moved at about the same pace as other cases in which a group of petitioners alleged that the hepatitis B vaccine caused them to suffer from various injuries.

Various medical records were filed in 2003. Additional medical records were filed over the several years.

On September 12, 2008, a fact hearing was held to obtain testimony to resolve several factual disputes. Mr. Picciotti and his mother both testified. On March 31, 2009, findings of fact were issued.

On June 12, 2009, Mr. Picciotti filed a motion for a decision dismissing his petition. Mr. Picciotti asserts in his motion that upon an investigation of the facts and the science support his case under the current applicable law, he will be unable to demonstrate entitlement to compensation in the Program. Petr's Motion at 1. Accordingly, Mr. Picciotti requests that the undersigned dismiss his petition. Id.

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), Mr. Picciotti must prove either 1) that he suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that he suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Mr. Picciotti suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Mr. Picciotti's alleged injury was vaccine-caused.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records do not support Mr. Picciotti's claim, a medical opinion must be offered in support. Mr. Picciotti, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that Mr. Picciotti has failed to demonstrate either that he suffered a "Table Injury" or that his injuries were "actually caused" by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master