

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

No. 10-362V

Filed: February 17, 2012

(Not for Publication)

JOHN AUSTIN and JUDY QUANT,
parents of Crystal Austin, a minor,
Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,
Respondent.

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Petitioners' Motion for a Decision;
Dismissing the Insufficient Petition;
Proof of Causation; Vaccine Act
Entitlement; Denial Without Hearing

DECISION¹

Vowell, Special Master:

On June 10, 2010, John Austin and Judy Quant ["petitioners"] filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² [the "Vaccine Act" or "Program"], on behalf of their minor daughter, Crystal Austin ["Crystal"]. The petition asserted that Crystal's seizure disorder was caused by the administration of varicella and measles, mumps, and rubella ["MMR"] vaccines on April 14, 2008.

On October 29, 2010, I ordered petitioners to file their expert report by December 28, 2010. Between December 2010 and May 2011, petitioners requested and received four extensions of time to file their expert report. On May 13, 2011, petitioners requested a fifth delay to discuss the expert's report with their attorney. They proposed to file a status report on June 13, 2011, updating the court on future proceedings.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

On June 13, 2011, July 13, 2011, August 5, 2011, and September 12, 2011 petitioners filed status reports indicating they were pursuing alternative counsel and requesting thirty additional days to update the court on the future proceedings of their case.

On September 19, 2011, I issued a show cause order requiring petitioners to file either an expert report or substitution of counsel, or otherwise show cause for why this case should not be dismissed for failure to prosecute. On October 4, 2011, petitioners filed their show cause response, and indicated that petitioners' "counsel will file the appropriate motions to withdraw as attorney of record once the issue of interim fees and costs is resolved."

On January 24, 2012, I issued an order deferring a ruling on petitioners' motion for interim fees until the conclusion of the entitlement phase of this case.

On February 15, 2012, petitioners moved for a decision on the merits of the petition, acknowledging that they have been unable to secure alternative counsel and have thus decided not to proceed with their claim.

To receive compensation under the Program, petitioners must prove either 1) that Crystal suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Crystal's vaccinations, or 2) that Crystal 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 Crystal suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Crystal's alleged injury was vaccine-caused.

Under the Act, petitioners may not be given a Program award based solely on the petitioners' 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 there are insufficient medical records supporting petitioners' claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion.

Accordingly, it is clear from the record in this case that petitioners failed to demonstrate either that Crystal suffered a "Table Injury" or that Crystal's 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 Denise K. Vowell
Denise K. Vowell
Special Master