

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

No. 02-1319V

Filed: April 3, 2012

DONNA FELD,	*	
parent of Joshua Feld, a minor,	*	
	*	
Petitioner,	*	Autism; Failure to Prosecute;
	*	Failure to Follow Court Orders;
v.	*	Dismissal
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

DECISION¹

On October 3, 2002, petitioner 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 her son, Joshua Feld [“Joshua”].

On October 4, 2011, I granted petitioner’s prior counsel’s motion to withdraw. During a status conference held on December 6, 2011, where petitioner appeared pro se, I reviewed the history of the Omnibus Autism Proceeding [“OAP”] and explained that the decisions from the test cases are not binding on Ms. Feld or on any other petitioner in the OAP who claims that vaccines cause autism spectrum disorders. I explained, however, that unless she has different evidence or theories not presented in the test cases, the results in the test cases indicate that this claim is unlikely to be successful.

In my December 7, 2011 order, petitioner Donna Feld was ordered to file a

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in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), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

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

statement identifying her theory of how Joshua's vaccines caused his autism by no later than January 6, 2012. She was also ordered to file updated medical records by no later than February 3, 2012.

Petitioner failed to file her causation statement as ordered. On January 13, 2012, I issued a non-compliance order instructing petitioner, Donna Feld, to file her causation statement and an explanation for why the prior deadline was missed, by no later than January 27, 2012.

On February 8, 2012, after petitioner missed both her second deadline for filing her causation statement and the first deadline set for filing updated medical records, I issued an order to show cause. The show cause order noted the missed deadlines and ordered Ms. Feld to comply with my prior orders or explain why this case should not be dismissed for failure to prosecute, by no later than March 9, 2012. My order indicated that a failure to respond to the order would result in this case being dismissed.

Because Ms. Feld has a pending case for another child, which is still being handled by counsel, on March 16, 2012, I issued another show cause order instead of dismissing her case. This second show cause order,³ clearly indicated that it was Ms. Feld's last chance to file her causation statement and updated medical records, or request an extension of time to file them. Additionally, it clearly noted that the materials must be received by the court by April 2, 2012, and that if nothing was received from petitioner by April 2, 2012 this case would be immediately dismissed. To date, nothing has been received from petitioner.

I. Failure to Prosecute

It is petitioner's duty to respond to court orders. As I reminded petitioner in my February 8, 2012 and March 16, 2012 orders, failure to follow court orders, as well as failure to file medical records or an expert medical opinion, shall result in dismissal of petitioner's claim. *Tsekouras v. Sec'y, HHS*, 26 Cl. Ct. 439 (1992), *aff'd per curiam*, 991 F.2d 810 (Fed. Cir. 1993); *Sapharas v. Sec'y, HHS*, 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b).

II. Causation In Fact

To receive compensation under the Program, petitioner must prove either 1) that Joshua suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Joshua's vaccinations, or 2) that Joshua suffered an injury that

³ Although the second show cause issued with regards to petitioner's causation statement and updated medical records, my March 16, 2012 order was the third show cause order issued to pro se petitioner Ms. Feld. I previously issued a show cause order on November 8, 2011, instructing Ms. Feld to contact chambers to arrange for a status conference.

was actually caused by a vaccine. See §§13(a)(1)(A) and 11(c)(1). Under the Vaccine Act, a special master cannot find that petitioner has proven her case by a preponderance of the evidence based upon “the claims of petitioners alone, unsubstantiated by medical records or by medical opinion.” § 13(a).

Petitioner has failed to file sufficient medical records and evidence in this case. Thus, an examination of the record did not uncover any evidence that Joshua suffered a “Table Injury.” Further, the record does not contain a medical opinion or any other persuasive evidence indicating that Joshua’s autism spectrum disorder was vaccine-caused.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Joshua suffered a “Table Injury” or that Joshua’s injuries were “actually caused” by a vaccination. **This case is dismissed for insufficient proof and for failure to prosecute. The clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

Denise K. Vowell
Special Master