

To receive compensation under the Program, petitioner must prove either 1) that Luke suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Luke 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 Luke suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Luke’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 the medical records supporting petitioner’s claim are insufficient, a medical opinion must be offered in support. Petitioner, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that petitioner has failed to demonstrate either that Luke suffered a “Table Injury” or that Luke’s injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**²

IT IS SO ORDERED.

Denise K. Vowell
Special Master

²The undersigned notes that if petitioner elects to file a Petition for Fees and Costs pursuant to § 300aa-15(e), based on current case law petitioner will need to first establish proof of vaccination and the timely filing of the Petition for Vaccine Compensation, see § 300aa-16(a)(2) and 16(b), prior to any award for attorneys’ fees and costs being granted. See Brice v. Secretary of Health and Human Services, 358 F.3d 865, 869 (Fed. Cir. 2004), citing Martin v. Secretary of Health and Human Services, 62 F.3d 1403, 1406 (Fed. Cir. 1995).