

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 03-1338V
Filed: March 12, 2012**

MYRTLE LITTLE, *
parent of Keisha Little, *
 *
Petitioner, *
v. *
 *
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
 *
Respondent. *

Autism; Failure to Prosecute; Failure
To Follow Court Orders; Dismissal

DECISION¹

On June 3, 2003, Myrtle Little [“petitioner” or “Ms. Little”] 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 minor daughter, Keisha Little [“Keisha”]. The petition was a “short form” petition authorized by Autism General Order #1,³ and thus asserted that Keisha had a disorder on the autism spectrum and that one or more vaccines listed on the Vaccine Injury Table⁴ were causal of Keisha’s condition.

On March 8, 2011, petitioner filed notice to separate from the omnibus autism proceedings. On May 23, 2011, petitioner filed an amended petition, which alleged that as a result of her June 12, 2001 MMR and DTaP vaccines Keisha suffers from a seizure

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in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).

³ The text of Autism General Order #1 can be found at <http://www.uscfc.uscourts.gov/sites/default/files/autism/Autism+General+Order1.pdf> [“Autism Gen. Order #1”], 2002 WL 31696785 (Fed. Cl. Spec. Mstr. July 3, 2002).

⁴ 42 C.F.R. § 100.3 (2010).

disorder, subsequent developmental delays, and autistic disorder. Amended Petition at 1.

On October 11, 2011, I ordered petitioner to file an expert report by December 12, 2011. On December 12, 2011, petitioner filed a motion for extension of time to file her expert report, and proposed filing a status report indicating how she would like to proceed with her case. I granted petitioner's motion and ordered a status report be filed by January 10, 2012.

On January 10, 2012, petitioner filed a motion for extension of time to update the court on how she wishes to proceed with her case. I granted petitioner's motion and ordered petitioner to file either an expert report addressing causation or a motion for a ruling on the record, by no later than February 9, 2012.

On February 9, 2012, petitioner's counsel filed a status report which indicated that they have been unable to reach Ms. Little to discuss how she would like to proceed with her case. The next day, February 10, 2012, I ordered petitioner to file her expert report or otherwise show cause for why this case should not be dismissed for failure to prosecute, by no later than March 9, 2012.

On March 9, 2012, petitioner's counsel filed a response to my show cause order. The response detailed the dates and methods counsel has attempted to communicate with Ms. Little since December 2011. Petitioner's counsel noted that petitioner contacted them on February 21, 2012, and indicated that "due to a personal domestic struggle, she has been forced to continually change her contact information." Show Cause Response, filed March 9, 2012, at ¶ 4. Additionally, Ms. Little indicated that "she intends to proceed with her case in the Vaccine Program and seek alternative counsel," but "due to personal issues, has been unable to focus her time and energy on her case." *Id.* at 5. Petitioner's counsel sent an email to Ms. Little summarizing their conversation, and reminding her that a response to the show cause order was due by March 9, 2012. *Id.* After not hearing again from Ms. Little, on March 9, 2012, petitioner's counsel tried calling her, but the phone number was disconnected. *Id.* at ¶ 6.

I. Failure to Prosecute

While I recognize Ms. Little's personal situation is impacting her ability to focus on this case and remain in contact with her counsel, it is still her responsibility to respond to court orders. As I stressed in my February 10, 2012 Order to Show Cause, failure to respond to a court order because petitioner has failed to stay in contact with her attorney is deemed noncompliance with a court order, and noncompliance will not be tolerated. Additionally, I emphasized that 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 Keisha suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that Keisha 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 Keisha suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Keisha’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 there are insufficient medical records supporting Keisha’s claim, 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 Keisha suffered a “Table Injury” or that Keisha’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.**⁵

IT IS SO ORDERED.

s/Denise K. Vowell

Denise K. Vowell
Special Master

⁵ I note that if petitioner wishes to continue with her claim, she may file a Motion for Reconsideration pursuant to Vaccine Rule 31. However, I caution petitioner that if I grant her motion, she will again be in the situation of needing to quickly provide an expert report or her case will be dismissed.