



Id.

To receive compensation under the Program, petitioner must prove either 1) that Justin suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or 2) that Justin 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 Justin suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Justin’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 Justin suffered a “Table Injury” or that Justin’s injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**<sup>2</sup>

**IT IS SO ORDERED.**

**s/Denise K. Vowell**

Denise K. Vowell

Special Master

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<sup>2</sup>The 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).

Further, I note that petitioner filed her motion to dismiss as a “Notice of Election to File a Civil Action.” Petitioner is advised that her motion is not sufficient notice under the statute. The instant decision constitutes my final “Decision” in this case, pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). If petitioner wishes to have this case reviewed by a Judge of the United States Court of Federal Claims, a motion for review of this decision must be filed within 30 days. After 30 days the Clerk of this Court shall enter judgment in accord with this decision. If petitioner wishes to preserve whatever right petitioner may have to file a civil suit (that is a law suit in another court) petitioner must *then* file an “election to reject judgment in this case and file a civil action” within 90 days of the filing of the judgment. 42 U.S.C. § 300aa-21(a).