

vaccine, his injury must be one that persists “for more than 6 months after the administration of the vaccine.” § 11(c)(1)(D)(i). In sum, I informed petitioner that I could not decide entitlement or award compensation because, on either ground, I do not have jurisdiction over this case.

On November 19, 2012, petitioner submitted a statement alleging that he continues to suffer residual effects of the shingles vaccine, including restlessness, weakness, arm pain, and occasional vomiting. Thereafter, on December 6, 2012, respondent filed a Motion to Dismiss, asserting that, because petitioner seeks compensation for a vaccine that is not covered by the Vaccine Act, his claim “must be dismissed for failure to state a claim upon which relief may be granted, pursuant to [Rule 12(b)(6) of the Rules of the United States Court of Federal Claims].”⁴ Motion to Dismiss at 1.

In her Motion to Dismiss, respondent correctly states that “[t]o be entitled to compensation under the Vaccine Act, a petitioner must demonstrate that he ‘received a vaccine set forth in the Vaccine Injury Table.’” *Id.* (citing § 11(c)(1)(A)). Here, petitioner alleges that his injuries were caused by the shingles vaccine he received on August 7, 2012. Petition at 1. The shingles vaccine is not listed on the Vaccine Injury Table. See 42 C.F.R. § 100.3(a). As petitioner has failed to demonstrate receipt of a Table vaccine, his case must be dismissed. The fact that petitioner has not demonstrated an injury lasting more than 6 months is moot.⁵

Accordingly, it is clear from the record that petitioner has failed to demonstrate that he received a vaccine set forth in the Vaccine Injury Table. **Thus, this case is dismissed for failure to state a claim upon which relief may be granted. The Clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

Denise K. Vowell
Special Master

§ 4131(a); Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13632(a)(3), 107 Stat. 312 (1993)).

⁴ The Rules of the U.S. Court of Federal Claims, as amended through July 2, 2012, are available at: <http://www.uscfc.uscourts.gov/rules-and-forms>.

⁵ The Supreme Court has defined as “moot” those issues that “are no longer ‘live’” or for which “the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496 (1969). Because this Court does not have jurisdiction over vaccines not listed on the Vaccine Injury Table, the issue of the 6-month injury requirement has never been “live” in this case.