

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

No. 07-72V

Filed: July 30, 2010

Not to be Published

STEPHANY DIXON, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Decision on the Record; Influenza
Vaccine; Pain and Weakness; Failure
To Produce an Expert Report

DECISION¹

Vowell, Special Master:

On January 29, 2007, Stephanie Dixon [“petitioner”] filed a petition in the National Vaccine Injury Compensation Program [“the Program”],² alleging that she received an influenza vaccine on November 15, 2006 that caused limited mobility, soreness, pain, difficulty lifting and pulling, weakness, dizziness, left side numbness, and upset stomach. Petition at Exhibit 5. The information in the record does not show entitlement to an award under the Program.

On April 7, 2010, I ordered petitioner to file her expert report by no later than April 30, 2010, and I subsequently granted petitioner’s motion for an enlargement of time to file that report by May 14, 2010. No report has been filed. During a June 9, 2010 status conference, petitioner’s counsel stated that the report had been obtained, and petitioner had chosen not to file it into the record. Counsel further made an oral

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in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, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

motion for a decision on the record as it now stands. He explained that while there is evidence that petitioner did suffer a reaction to a vaccination, that reaction was transient, did not last six months as required by the Vaccine Act, and was not the cause of her more extensive medical issues.

To receive compensation under the Program, petitioner must prove either 1) that she suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that she 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 petitioner suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that petitioner’s alleged injury was vaccine-caused.

A petitioner may not receive 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 petitioner’s claim, a reliable 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 she suffered a “Table Injury” or that her injuries were “actually caused” by a vaccination. **Thus, this case is dismissed for insufficient proof. The clerk shall enter judgment accordingly.**

IT IS SO ORDERED.

Denise K. Vowell
Special Master