

OFFICE OF SPECIAL MASTERS

No. 99-079V

March 30, 2006

Not for Publication

CHRISTINA MONROE

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Petitioner,

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Hepatitis B vaccine; causation
in fact; decision on the record

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v.

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SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

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Respondent.

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Clifford J. Shoemaker, Vienna, VA, for petitioner.

Vincent J. Matanoski, Washington, DC, for respondent.

Denise K. Vowell, Special Master

DECISION¹

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

Petitioner² timely filed a petition dated February 19, 1999, under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq., (“the Program”) alleging that hepatitis B vaccine caused her an unspecified injury. Petitioner received two Hepatitis B vaccinations: the first on April 24, 1993 and the second on May 29, 1993. (Pet. Ex 5, p. 11).

In order to prevail under the Program, petitioner must prove either a “Table Injury”³ or that a vaccine listed on the Table was the cause in fact of an injury. Petitioner did not suffer a “Table Injury.” While the petition and medical records established that petitioner had received the Hepatitis B vaccine and that she subsequently developed a medical condition, petitioner did not proffer medical records or an expert opinion causally linking the condition to the vaccine.⁴

² On March 6, 2006, petitioner moved to recaption. That motion is GRANTED.

³ A “Table Injury” is an injury listed on the Vaccine Injury Table, 42 U.S.C. § 300aa-14, corresponding to the vaccine received within the time frame specified. The Hepatitis B vaccine is listed on the Table; however petitioner’s medical condition is not one listed as corresponding to the Hepatitis B vaccine.

⁴ On August 3, 2005, the former special master assigned to this case issued an Order to Show Cause why this case should not be dismissed for failure to make a prima facie case by October 14, 2005. On October 14, 2005, petitioner responded to the Order to Show Cause, stating that she would prove causation in fact. Petitioner’s Response at unnumbered page 4. On October 21, 2005, respondent filed a Rule 4(b) Report and Reply to Petitioner’s Response to Order to Show Cause, noting that as petitioner had not filed a medical expert report to support her assertion, petitioner had not made a prima facie case. Respondent requested that a deadline for filing a medical expert report be established. On October 27, 2005, the former special master issued an Order, giving petitioner until January 31, 2006 within which to file a medical expert report supporting her causation in fact theory. On January 31, 2006, petitioner orally moved for a two-week extension to file her expert report. The former special master issued an Order on that date granting the extension of time until February 14, 2006.

On March 6, 2006, petitioner moved the undersigned special master⁵ for a judgment on the record, acknowledging that petitioner was unable to find an expert to support her theory of causation in fact. On March 24, 2006, respondent responded to petitioner's motion. Respondent did not object to a judgment on the record, but did not necessarily endorse the proposed entitlement decision attached to petitioner's motion.

DISCUSSION

To satisfy her burden of proving causation in fact, petitioner must offer "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury. A medical or scientific explanation must support this logical sequence of cause and effect." Grant v. Secretary, HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992); see also, Capizzano v. Secretary, HHS No. 00-759V, 2004 WL 1399178 (Fed. Cl. Spec. Mstr. June 8, 2004), aff'd 63 Fed. Cl. 227 (2004)(Merow, J.), rev'd, No. 05-5049, slip op. at 11 (Fed. Cir. March 9, 2006); Althen v. Secretary, HHS, 418 F. 3d 1274, 1278 (Fed. Cir. 2005); Agarwsal v. Secretary, HHS, 33 Fed. Cl. 482, 487 (1995).

Without more, "evidence showing an absence of other causes does not meet petitioner's affirmative duty to show actual or legal causation." Grant, supra, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6th Cir. 1983), cert. denied, 469 U.S. 817 (1984). An award may not be based on petitioner's claims alone. 42 U.S.C. § 300aa-13(a)(1).

⁵ This case was transferred to the undersigned special master on February 8, 2006.

CONCLUSION

A special master can only authorize compensation when a medical condition either falls within one of the “Table Case” categories or when some evidence, such as a competent medical opinion, causally connects the vaccine with the injury. No such proof exists in the record before me. Therefore, the petition for compensation is DENIED. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.⁶

IT IS SO ORDERED.

DATE

Denise K. Vowell
Special Master

⁶ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party’s filing a notice renouncing the right to seek review.