

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 01-208V
Filed: April 19, 2010**

MICHAEL KOSENSKY,	*	
	*	
Petitioner,	*	Decision on the Record;
	*	Type I Diabetes;
v.	*	Hepatitis B; Failure to
	*	Produce Expert Opinion
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

DECISION ¹

Vowell, Special Master:

On April 9, 2001, petitioner filed a petition in the National Vaccine Injury Compensation Program [“the Program”],² alleging that a hepatitis B vaccination administered on July 12, 1998 caused him to suffer Type I insulin dependent diabetes [“T1D”]. See Petition at 1. The information in the record, however, does not show entitlement to an award under the Program.

On April 16, 2010, petitioner filed a Motion for a Decision Dismissing His Petition. Petitioner asserts in his motion that under the current applicable law he will be unable to demonstrate entitlement to compensation in the Program. Petitioner’s Motion

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims's website,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

at 2. In his motion, petitioner explained that the evidence on which he expected to rely “is the same as that presented by Thomas Hennessey.” *Id.* at 2. Petitioner acknowledged that in Mr. Hennessey’s case, which served as a test case for evidence of a causative link between the hepatitis B vaccine and T1D, I found that petitioner did not demonstrate that vaccines can cause T1D or significantly aggravate an underlying condition of T1D. See *Hennessey v. Sec’y, HHS*, No. 01-190V, 2009 WL 1709053 (Fed. Cl. Spec. Mstr. May 29, 2009), *aff’d*, 91 Fed. Cl. 126 (2010). Petitioner has therefore requested that I dismiss the above-captioned petition. Petitioner’s Motion at 1.

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

s/Denise K. Vowell
Denise K. Vowell
Special Master