

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

No. 09-826V

Filed: November 16, 2011

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RODGER PLEMMONS,

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Petitioner,

\*

**Special Master Zane**

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v.

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Ruling on the record; influenza (flu)  
vaccine; Guillain-Barre syndrome (GBS)

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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Franklin John Caldwell, Jr., Maglio, Christopher & Toale, Sarasota, FL, for Petitioner;  
Lisa Ann Watts, United States Dep't of Justice, Washington, D.C., for Respondent.

**UNPUBLISHED RULING FINDING ENTITLEMENT\***

This matter is before the undersigned on Petitioner's Motion for a Ruling on the Record. As explained below, a review of the record as a whole demonstrates that Petitioner is not entitled to an award of compensation.

Petitioner originally filed a petition for compensation on November 30, 2009, under the National Childhood Vaccine Injury Act of 1986, as amended ("the Act"), alleging, *inter alia*, that he suffered from Guillain-Barre syndrome (GBS), which was caused-in-fact by his receipt of the influenza (flu) vaccine administered to him on October 8, 2008. Petition at 1-2. During a status conference held on November 1, 2011, counsel for Petitioner moved for a ruling on the record as it now stands explaining that Petitioner would not be submitting an expert report or further evidence in support of his claim. Respondent stated that she relied on the information contained

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\*Because this ruling contains a reasoned explanation for the special master's action in this case, the special master intends to post it 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). 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, a party has 14 days to identify and to move to delete such information before 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. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

in the Rule 4 report as the basis for Respondent's position that Petitioner's claim was not appropriate for compensation. Having considered the parties' positions regarding Petitioner's motion, the undersigned hereby grants Petitioner's motion for a ruling on the record and makes this ruling based on the written record. Vaccine Rule 8(d).

To be awarded compensation under the Act, a 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 the vaccinations in question, or 2) that any of his medical problems were actually caused by the vaccine. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). Petitioner may not be awarded compensation based on his statements alone. 42 U.S.C. § 300aa-13(a)(1). Rather, the petition must be supported by either the medical records or by the opinion of a competent physician. *Id.*

An examination of the filed medical records, however, does not show any evidence that Mr. Plemmons suffered a "Table Injury." Furthermore, the medical records do not support Petitioner's claim that his alleged injury was caused by his vaccination in that none of Petitioner's treating physicians definitively opined that his alleged injury, i.e., GBS, was caused or significantly aggravated by his vaccination. *See generally* Petitioner's Exhibits 1 and 5. Moreover, Petitioner has not offered and will not be offering an expert medical opinion.

Based on the review of the record as a whole as discussed above, Petitioner has failed to prove by a preponderance of evidence that he suffered a "Table Injury" or that his condition was "actually caused" by a vaccination. As a result, Petitioner's request for compensation must be and hereby is DENIED. In the absence of a motion for review, the Clerk of the Court is directed to enter judgment accordingly.

**IT IS SO ORDERED.**

/s/ Daria J. Zane  
Daria J. Zane  
Special Master