

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-069V

Filed: August 30, 2013

NOT TO BE PUBLISHED

JESSICA NICOLE YOUNG,
Petitioner,

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Special Master Zane

v.

Ruling on the Record; Human
Papillomavirus (“HPV”) Vaccine;
Insufficient Proof of Causation

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Katherine D. Gonyea, Dow, Golub, Remels & Beverly, LLP, Houston, TX, for Petitioner
Lisa Watts, United States Dep’t of Justice, Washington, DC, for Respondent

UNPUBLISHED DECISION DISMISSING CASE¹

On February 2, 2011, Jessica Young (“Petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986 (“the Vaccine Act”), 42 U.S.C. § 300a-10, *et seq.*, as amended. Petitioner alleged that she suffered Fibromyalgia, Gastroparasis, Chronic Fatigue, Depression, and Chronic Abdomen Pain as a result of receipt of the human papillomavirus (“HPV”) vaccination she received on January 30, 2008, March 31, 2008, and May 30, 2008. Petition at ¶ 10. For the reasons set forth below, the undersigned finds that

¹ Because this decision contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, § 205, 44 U.S.C. § 3501 (2006). The decisions of the special master will be made available to the public with the exception of those portions that contain trade secret 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. As provided by Vaccine Rule 18(b), each party has 14 days to file a motion requesting the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available. If the special master, upon review of a timely filed motion to redact, agrees that the identified material fits within the categories listed above, the special master shall redact such material from the decision made available to the public. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

Petitioner is not entitled to compensation and dismisses her case.

I. BACKGROUND

Petitioner originally filed her petition on February 2, 2011. On May 3, 2011, Respondent filed a report pursuant to Vaccine Rule 4 (c), stating, *inter alia*, that the injury suffered by Petitioner's daughter is not a table injury, and therefore, there is no presumption of the causation between the vaccines received and the injuries suffered by Petitioner's daughter. *See* Respondent's Rule 4 Report at 8. Additionally, Respondent stated that Petitioner failed to prove by a preponderance of evidence that her injury was caused-in-fact by the vaccination she received January 30, 2008, March 31, 2008, and May 30, 2008., because Petitioner failed to provide a reliable medical theory causally connecting her vaccinations with her medical condition, and failed to establish a logical sequence of cause and effect showing that the vaccines caused her injury. *See id* at 8-10. Therefore, Respondent concluded that compensation is not appropriate in this case. *Id.* at 10.

On July 18, 2011, Petitioner was ordered to file any outstanding medical records or an affidavit from Petitioner. Petitioner was also ordered to file an expert report by Friday, September 16, 2011. Petitioner, over the next two years, filed motions for enlargements of time to file an expert report. All such motions were granted. On June 7, 2013, Petitioner moved once again for an enlargement of time to file an expert report. A status conference was held before the undersigned on June 26, 2013, during which Petitioner's counsel indicated that she had received an expert report and was consulting with Petitioner on how to proceed.

On August 15, 2013, Petitioner was ordered to file an expert report or a status report updating the court on how Petitioner wishes to proceed. On August 23, 2013, Petitioner filed a Motion for a Ruling on the Record ("Motion for Decision"). Subsequently, Respondent advised that she did not object to the granting of this motion. This matter is now before the undersigned for decision.

II. DISCUSSION

To be awarded compensation under the Vaccine 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 or significantly aggravated by the vaccination(s) at issue. *See* 42 U.S.C. §§ 300aa-11(c)(1) and 300aa-13(a)(1)(A).

Actual causation must be proved by preponderant evidence demonstrating that the subject vaccination caused the petitioner's injury by showing: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." *Althen v. Sec'y of Health & Human Servs.*, 418 F.3d 1274, 1278 (Fed. Cir. 2005). The logical sequence of cause and effect must be supported by "reputable medical or scientific explanation." *Id.*, quoting *Grant v. Sec'y of Health & Human Servs.*, 956

F.2d 1144, 1148 (Fed. Cir. 1992). A petitioner may not be awarded compensation based on petitioner's claims alone. 42 U.S.C. § 300aa-13(a)(1). Rather, the petition must be supported by either medical records or by the opinion of a competent physician. *Id.*

An examination of the record demonstrates that it does not contain medical records or a medical opinion sufficient to demonstrate that Petitioner was injured by a result of receipt of an HPV vaccination. First, there are no presumptive injuries associated with the HPV vaccine and accordingly Petitioner did not claim to have suffered a "Table Injury" associated with the HPV vaccination, 42 C.F.R. § 100.3(a) (2011).

Second, Petitioner has not proved that her injuries were caused in-fact by her receipt of the HPV vaccination. Specifically, the record indicates none of Petitioner's treating physicians opined that her injuries were caused or significantly aggravated by the vaccination she received. *See* Exs. 1-18. Finally, Petitioner has not submitted an expert report and, by filing this Motion, has indicated that she will not submit an expert report supporting her claim that the HPV vaccination caused her injuries.

Based on the review of the record as a whole, Petitioners have failed to prove by preponderant evidence that their son suffered a "Table Injury" or that his condition was "actually caused" by his vaccinations.

Petitioner's claim for compensation is DENIED, and this case is DISMISSED for insufficient proof. In the absence of a motion for review, the Clerk of the Court is directed to enter judgment accordingly.²

IT IS SO ORDERED.

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

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.