

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 04-1371V
Filed: April 16, 2010**

PATRICIA JOUBERT, parent of CARYLANNE	*	
JOUBERT, a minor,	*	
	*	
Petitioner,	*	Decision on the Record;
	*	Type 1 Diabetes;
v.	*	Thimerosal Containing
	*	Vaccines, Failure to Produce
SECRETARY OF THE DEPARTMENT	*	Expert Report
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
	*	

DECISION¹

Vowell, Special Master:

On August 24, 2004, petitioner filed a petition in the National Vaccine Injury Compensation Program [“the Program”],² alleging that thimerosal-containing vaccinations administered on August 30, 2001 caused her daughter Carylanne Joubert [“Carylanne”] 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 Her Petition. Petitioner asserts in her motion that under the current applicable law she will be unable to demonstrate entitlement to compensation in the Program. Petitioner’s Motion at 2. In her motion, petitioner explained that the evidence on which she

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’s website,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

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 Carylanne suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that Carylanne 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 Carylanne suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Carylanne’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 Carylanne 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.

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