

In the United States Court of Federal Claims

No. 02-156V
(Filed October 15, 2007)¹

UNPUBLISHED

* * * * *
GINA RUIZ,
Plaintiff,
v.
SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant.
National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-1 et seq.; Proof of Causation; Constitutionality of Method of Appointment of Special Masters.

Richard Gage, Cheyenne, WY, for plaintiff.

Lisa A. Watts, United States Department of Justice, with whom were Peter D. Keisler, Assistant Attorney General, Timothy P. Garren, Director, Mark W. Rogers, Deputy Director, Gabrielle M. Fielding, Assistant Director, Washington, D.C., for defendant.

OPINION

^{1/} This opinion was issued under seal, in accordance with Rule 18(b) of the Vaccine Rules of the United States Court of Federal Claims (Appendix B to the Rules of the United States Court of Federal Claims), on August 9, 2007. Pursuant to Rule 18(b), the parties had fourteen days to propose redactions to the sealed opinion. Because no redactions have been requested by the parties, the entire decision is now being made public, in accordance with Rule 18(b)'s mandate that "[i]n the absence of an objection, the entire decision will be made public."

Bush, Judge.

In this lawsuit, petitioner Gina Ruiz seeks review of a special master's March 14, 2007 decision which denied her compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (2000) (the Vaccine Act). In her Vaccine Act petition, Ms. Ruiz alleged that a hepatitis B vaccine administered to her on June 8, 2001 caused her to suffer from physical and psychological injuries for which she was entitled to compensation. The special master denied relief to petitioner on the ground that Ms. Ruiz had failed to establish causation, *i.e.*, that the hepatitis B vaccine had actually caused her injuries. For the reasons set forth below, the special master's decision in that regard was neither arbitrary nor capricious. The decision is therefore affirmed.

BACKGROUND

I. Factual History

Petitioner Gina Ruiz (petitioner, Ms. Ruiz) was born on August 29, 1977. On May 7, 2001, at twenty-three years of age, Ms. Ruiz received the first of three doses of the hepatitis B vaccine.² Ex. 1 at 1. That injection was administered to petitioner with no complications.³ About one month later, on June 8, 2001, petitioner received the second dose of the vaccine. *Id.* Ms. Ruiz's reaction to that dose, and the events that followed, are the focus of her claim for compensation.

According to notes from the Albany County Public Health clinic in Laramie, Wyoming, the second dose of the hepatitis B vaccine was injected into petitioner's right shoulder. The record reflects that, immediately after the injection was administered, the skin on Ms. Ruiz's shoulder flushed bright red. Ex. 6 at 1. In addition, a small bump appeared on petitioner's skin at the injection site, and she

^{2/} Ms. Ruiz's medical history prior to administration of the hepatitis B vaccine at issue in this suit was generally unremarkable, other than the fact that petitioner suffered an injury to her left shoulder in 2000 which ultimately required surgery.

^{3/} A few weeks later, after the first dose of hepatitis B vaccine but before the second, Ms. Ruiz visited her primary care physician and complained of nausea. The doctor diagnosed her as suffering from gastric/peptic ulcer disease, and prescribed Prevacid to treat her stomach discomfort. Ex. 8 at 4. Petitioner has not alleged that this condition was related, in any way, to her vaccination.

developed some bruising and hives. Shortly thereafter, Ms. Ruiz complained that she was hot and did not feel well. The nurse who had administered the vaccine called the office of petitioner's primary care physician, Dr. Brendan Fitzsimmons, and a nurse on duty recommended that Ms. Ruiz visit Dr. Fitzsimmons' office.

When petitioner arrived at Dr. Fitzsimmons' office later on June 8, 2001, she stated that she was nauseous and not feeling well. Ex. 8 at 6. The record shows that, although Ms. Ruiz looked pale at that time, she was able to walk without assistance, was not lightheaded, and did not appear to be in distress. Petitioner was also able to breathe easily, and her blood pressure and temperature were normal. Medical notes created during the visit indicate that, by that time, Ms. Ruiz's shoulder displayed "a small area of erythema that [was] already abating." *Id.* Dr. Fitzsimmons treated Ms. Ruiz's symptoms, which he assessed as an "[a]dverse reaction to Hepatitis B shot," with epinephrine and Benadryl.⁴ *Id.*

On June 12, 2001, petitioner returned to Dr. Fitzsimmons' office and reported that she continued to feel hot and achy. She also reported tightness in her neck and back, and twitching and spasms in her neck and shoulders. Petitioner stated further that her appetite and energy had waned following the second dose of the hepatitis B vaccine, and that she had been experiencing severe headaches. Ex. 8 at 7. On that day, Dr. Fitzsimmons wrote in his notes that Ms. Ruiz was suffering from an "[i]nvoluntary movement disorder of uncertain etiology but certainly has to be believed to be related to the vaccine." *Id.* He then consulted a neurologist, Dr. Reed Shafer, who suggested that Valium might alleviate petitioner's muscle spasms. *Id.* Two days later, Ms. Ruiz visited Dr. Fitzsimmons' office and repeated her complaints to a nurse on duty. *Id.* at 8. She reported that her although her neck had stopped twitching, her left arm was shaking more frequently. She visited again on June 18, 2001, and Dr. Fitzsimmons found as follows:

[Petitioner] returns today for follow up from the movement disorder that she seems to have developed in response to Hepatitis B vaccine, injected on June 8th. We had spoken with the neurologist about this and he

⁴/ Epinephrine is used in the treatment of "acute allergic disorders." Stedman's Medical Dictionary at 657 (28th ed. 2006). Benadryl is an antihistamine also used to treat allergic reactions.

suggested some muscle relaxants in the form of Valium, which we tried. It seemed to be helpful to a certain extent in terms of some of the tremor-y feelings and some of the upset stomach but really hasn't stopped the tremors. She has actually gotten used to these and has been able to go to work and when she has to do things, she has been able to produce purposeful movements and the involuntary movements cease temporarily and return as soon as she is not purposefully moving. She still has movement of her head off to the left with raising of her left shoulder, etc. She wants us to take a look at the bruise on her right shoulder where she received the vaccine. It looks like this is getting a little worse.

Ex. 8 at 10. Dr. Fitzsimmons' assessment at that time was recorded as "[s]tatus post vaccination with Hepatitis B" and "[i]nvoluntary movement disorder." *Id.*

The record shows that, on June 20, 2001, Ms. Ruiz visited a neurologist, Dr. Kurt Hopfensperger. At the appointment, petitioner described her symptoms and stated that they had persisted for nine to ten days. Ex. 7 at 1. Dr. Hopfensperger found that petitioner was experiencing frequent, sudden lateral flexion of her neck, with apparently uncontrollable raising of her left shoulder, as well as minor clumsiness and a marked tremor in her left arm. *Id.* at 2-3. Ms. Ruiz's strength was normal, however, and she had no loss of sensation or reflexes. Dr. Hopfensperger diagnosed petitioner as suffering from an "acute onset of a markedly abnormal movement disorder involving the left upper extremity and the left shoulder girdle musculature, and the left neck musculature." *Id.* at 3. The doctor wrote in his notes that "[i]t is possible that the vaccination may have triggered this . . . or it is possible that it is coincidental to the vaccination." *Id.* Two days later, petitioner underwent a magnetic resonance imaging scan (MRI), which was normal. Ex. 4 at 20-21.

On June 28, 2001, petitioner visited Dr. Hopfensperger again and complained of the same symptoms, as well as some new sensory loss. Ex. 7 at 14. Dr. Hopfensperger found that Ms. Ruiz was suffering from some patchy sensory loss in her forearm and hand. *Id.* He concluded that "Ms. [Ruiz] continues to have an unusual movement disorder which appears to be confined to the left upper extremity at this time." *Id.*

During the first two weeks of July 2001, Ms. Ruiz underwent an electroencephalogram and MRIs of her thoracic spine, cervical spine, and left brachial plexus, all of which were normal. Ex. 7 at 12; Ex. 4 at 23-25. Petitioner also saw Dr. Hopfensperger on July 25, 2001, and complained that her condition had worsened, and that her left leg was numb and weak. Ex. 7 at 15. The doctor concluded that petitioner was “having progression of her neurologic syndrome,” and he ordered additional MRIs and a lumbar spinal puncture to be conducted in an effort to identify the cause of that syndrome.

On August 2, 2001, Ms. Ruiz visited Dr. Dan Radosevich, at the University of Wyoming Student Health Service, and reported that she had been suffering from frequent epigastric pain.⁵ Ex. 3 at 11. At the appointment, she recounted her medical history, including the second injection of the hepatitis B vaccine, her subsequent reaction, and the fact that she had developed a tremor in her left arm and leg. No diagnosis regarding the tremor was made during the appointment, but the record memorializes petitioner’s own statement that she had suffered an adverse reaction to the hepatitis B vaccine. *Id.* Upon examination, Dr. Radosevich found that Ms. Ruiz had a resting tremor in her left arm and that her stomach was tender to touch. Dr. Radosevich suspected that petitioner was suffering from gastritis, and he prescribed Zantac to treat her discomfort.

On August 7, 2001, Ms. Ruiz underwent MRIs of her cervical spine and her brain, both of which were normal. Ex. 4 at 27-28. On August 16, 2001, petitioner visited with Dr. Hopfensperger and reported that the uncontrollable movements in her left arm had improved. She stated, however, that she had developed pain, weakness, abnormal movement, and sensory loss in her left leg. Ex. 7 at 18. Upon examination, the doctor found that although Ms. Ruiz was experiencing sensory loss, she had normal strength and reflexes, and no atrophy or fasciculations.⁶ *Id.* Dr. Hopfensperger prescribed Neurontin in the hope that it would improve petitioner’s symptoms while further tests were conducted.

On September 12, 2001, petitioner visited another neurologist, Dr. Sheri Friedman, and recounted her experiences related to the hepatitis B vaccination.

⁵/ Epigastric pain is pain in the area of the stomach. *See* Stedman’s at 790.

⁶/ Fasciculations are “[i]nvoluntary contractions, or twitchings, of groups (fasciculi) of muscle fibers.” Stedman’s at 704.

After a physical examination, Dr. Friedman found that “[t]here are some aspects of this movement disorder which are a bit unusual; her ability to suppress the movements to some extent. There also appears to be some distractibility.” Ex. 14 at 2. Dr. Friedman recommended that petitioner undergo a lumbar puncture to rule out any unusual infections, and she prescribed Gabitril, a seizure medication, to treat her movement disorder. *Id.* Two days later, Ms. Ruiz’s cerebrospinal fluid was tested. The test revealed the existence of “rare white blood cells,” but “no organisms [were] seen.” Ex. 9 at 1. In addition, petitioner’s hepatitis B surface antigen was negative, and her protein count was normal. *Id.* at 5, 10.

On September 20, 2001, petitioner visited a third neurologist, Dr. Rajeev Kumar. Ex. 10 at 1. Following an extensive examination, Dr. Kumar found no evidence that Ms. Ruiz was suffering from an organic tremor disorder. Instead, he concluded that petitioner fulfilled all of the diagnostic criteria for a psychogenic tremor. Dr. Kumar noted that the results from Ms. Ruiz’s lumbar puncture were normal, and that her involuntary movements increased with anxiety, cold, and excitement, but decreased when petitioner was relaxed. *Id.* In addition, Dr. Kumar found that petitioner’s tremor was extremely distractible and disappeared entirely when Ms. Ruiz was asked to perform various physical and mental maneuvers. *Id.* at 3. Dr. Kumar summarized his findings, in relevant part, as follows:

Throughout the examination, she had extremely variable left arm tremor, which was predominantly distal, consisting of wrist flexion/extension, but at times would involve only the fingers, and at times would involve only the proximal arm. The frequency and vector of the movements was also quite variable as well as the amplitude. Occasionally during the examination, she would have left shoulder elevation, which was either brief - lasting perhaps 1 second - and at times tonic - lasting up to 30 seconds. Intermittently through the examination, she would have high frequency, low amplitude left leg tremor. The tremor would become more pronounced at times when she was standing in place and, a[t] times would be intermittent and variable when walking.

All of her tremor was extremely distractible and disappeared entirely when we had her perform different physical and mental maneuvers. Her tremor entrained to the frequency of tasks performed with the contralateral limb. She had a marked response to suggestion with severe exacerbation of tremor in the upper and lower extremities, as well as the neck with application of a tuning fork to the various areas. Thereafter, she had a marked response to placebo with suggestion and application of pressure to her neck, with complete elimination of all tremor entirely. Thereafter, this process was repeated and with suggestion once again, we made tremor re-emerge and thereafter, once again suppressed with pressure to the neck and suggestion.

In summary, Ms. [Ruiz] clearly has no evidence of an organic tremor disorder and fulfills all diagnostic criteria for psychogenic tremor.

She has typical distractibility, variability, entrainment of tremor and response to placebo and suggestion. I had a long discussion with her and her mother regarding the diagnosis. I specifically reassured them that there was no evidence that she had a serious neurological illness. I have asked her to follow up with her PCP regarding the diagnosis of psychogenic tremor. I suspect the underlying psychiatric diagnosis is conversion disorder, but obviously this diagnosis needs to be made by a psychiatrist. I have asked her to pursue local referral to a psychologist and psychiatrist. Lastly, I am concerned that many of her GI symptoms may also be psychogenic in nature, given the time course of their development and the significant improvement that she states she had when she used benzodiazepines. Obviously, this may require further investigation by a gastroenterologist and also an opinion from her psychiatrist.

Ex. 10 at 3-4.

On October 1, 2001, Ms. Ruiz returned to Dr. Friedman's office and reported that there had been no improvement in her movement disorder. Ex. 9 at 13. She also told Dr. Friedman that Dr. Kumar believed she was suffering from a psychosomatic disorder, and that she had seen a psychologist twice on Dr. Kumar's recommendation. Dr. Friedman apparently disagreed with Dr. Kumar's opinion, writing in the medical records that "[t]he assessment of Dr. Kumar . . . was that this was nonphysiologic. I am inclined to feel that this is a real movement disorder, at least to some extent." *Id.* Following an examination, however, Dr. Friedman noted that she observed significantly fewer muscle spasms in Ms. Ruiz's left leg than she had seen previously, and that "[m]ovement and voluntary activation of the muscles of the left lower extremity increase[d] the amount of spasms." *Id.*

A few weeks later, on October 18, 2001, Ms. Ruiz visited a psychiatrist, Dr. Scott Shannon, who diagnosed her as suffering from post-traumatic stress disorder. Ex. 11 at 1-2. In records from that visit, Dr. Shannon listed a "neurological event" as a "stressor" on Ms. Ruiz. *Id.* at 2.

On October 29, 2001, petitioner visited Dr. Friedman again and expressed a concern that her symptoms might be moving to her right leg. Ex. 9 at 14. Dr. Friedman wrote in the medical records from that visit that "I do not see any jerking movements or contractions of her left leg except when I began discussing the symptoms in her right leg with her. Her left leg, when I call attention to it, then begins having some jerking movements. In general, they appear to be much better than when I saw her previously." *Id.* Dr. Friedman also "explained to [Ms. Ruiz] that some of her movement may be related to stress and concern about her symptoms and that as she gets further out in time from the injection, she can expect her movement disorder to improve." *Id.*

On October 30, 2001, Ms. Ruiz visited the Student Health Service at the University for follow-up on her abdominal pain. Dr. John Healey examined petitioner and noted that she was suffering from "a very obvious intentional tremor in her left hand." Ex. 3 at 16. The next day, Ms. Ruiz saw Dr. Fitzsimmons, and on November 1, 2001, she underwent an upper gastrointestinal series in an attempt to investigate her nausea. That test was normal. Ex. 4 at 30; Ex. 8 at 11-13.

The record also shows that Ms. Ruiz visited a psychologist, Chuck Denison, Ph.D., eleven times from September 2001 to December 2001. Those visits are memorialized in patient progress notes written by Dr. Denison. Only a few

excerpts from those notes address the connection between petitioner’s vaccination and her psychological injury, and all of them appear to be written summaries of Ms. Ruiz’s own recollection of events. Notably, however, after an appointment on December 12, 2001, Dr. Denison wrote that he had diagnosed Ms. Ruiz with a “mood [disorder] due to med[ical] cond[ition].” Ex. 13 at 12.

II. Procedural History

Ms. Ruiz filed her petition for Vaccine Act compensation on March 1, 2002. In the petition, Ms. Ruiz alleged that the hepatitis B vaccine administered to her on June 8, 2001 had caused her to suffer from “anaphylactic shock” and various neurological symptoms, including tremors, severe headaches, loss of appetite and energy, twitching, numbness, and weakness in her extremities.

Following a stay of proceedings, granted at petitioner’s request, Ms. Ruiz was ordered to provide medical records and an expert report in support of her request for compensation.⁷ Petitioner failed to do so, however, and on February 2, 2007, the special master issued an Order to Show Cause seeking an explanation from petitioner as to why her petition should not be dismissed. Ms. Ruiz responded on March 8, 2007, by filing a two-page letter written by Dr. Denison to her attorney, Mr. Richard Gage, in February 2007. That letter provided a “summary of [Ms. Ruiz’s] treatment and [Dr. Denison’s] assessment of her condition.” Ex. 15 at 1. In the letter, Dr. Denison wrote that “[m]y conclusion then, and my continued perspective in hindsight, is that this patient was a stable individual and of sound mind before she received a vaccination for Hepatitis B (according to my notes) in 2001.” *Id.* In the second page of his letter, Dr. Denison stated further that

^{7/} Because Ms. Ruiz’s claim focused on the effects of the hepatitis B vaccine, her case was initially considered under an Omnibus Vaccine Act proceeding which sought to determine whether that vaccine could cause four different types of demyelinating neurological illnesses. Those Omnibus proceedings were completed in 2006, after the special master concluded that the vaccine could, in fact, cause those conditions. The special master found, however, that none of Ms. Ruiz’s allegations were related to any of the four medical conditions at issue in the Omnibus proceeding. Thus, the outcome of that proceeding was deemed irrelevant to petitioner’s claims, and this case was ordered to proceed.

[t]his patient did not fit the personality type for someone who malingers an illness, especially a very complicated one involving constant tremors. There did not appear to be any secondary gain at stake in being sick. Without any training in neurology I obviously could not speculate as to differential diagnosis. However, upon reviewing the fact pattern of this case, I was only able to conclude that the ongoing physical and psychological condition was a direct result of the immunization reaction.

Id. at 2.

On March 9, 2007, the special master issued an order striking the second page of Dr. Denison’s letter from the record, on the ground that Dr. Denison, a psychologist but not a medical doctor, was not qualified to address the issue of medical causation. On the same day, Ms. Ruiz filed Petitioner’s Motion for Decision on the Record. In that motion, petitioner stated that none of her doctors had “provided a specific name” for her condition, and that their inability to name her condition had made it difficult for her to “retain an expert that [would] give admissible testimony in relation to the movement disorder aspect of her vaccine injury.” Pet.’s Mot. for Dec. at 3. Ms. Ruiz stated further that she did not anticipate presenting such expert testimony. She asked, however, that the special master rely on the record evidence to find that the hepatitis B vaccine caused her involuntary movement disorder and emotional disorder. On March 14, 2007, the special master issued a decision denying petitioner’s request for relief under the Vaccine Act. The pending motion for review followed.

DISCUSSION

I. Standard of Review and Constitutional Challenge

There is no question that the United States Court of Federal Claims is authorized to review decisions by special masters in Vaccine Act cases. The Act provides, specifically, that

[u]pon the filing of a motion under paragraph (1) with respect to a petition, the United States Court of Federal

Claims shall have jurisdiction to undertake a review of the record of the proceedings and may thereafter--

- (A) uphold the findings of fact and conclusions of law of the special master and sustain the special master's decision,
- (B) set aside any findings of fact or conclusion of law of the special master found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and issue its own findings of fact and conclusions of law, or
- (C) remand the petition to the special master for further action in accordance with the court's direction.

42 U.S.C. § 300aa-12(e)(2); *Hanlon v. Sec'y of Health & Human Servs.*, 191 F.3d 1344, 1348 (Fed. Cir. 1999) (“Under the Vaccine Act, the Court of Federal Claims may not disturb the factual findings of the special master unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” (internal quotation marks omitted)); *De Bazan v. Sec'y of Dep't of Health & Human Servs.*, 70 Fed. Cl. 687, 690-91 (2006). The legislative history of the Act makes clear, however, that the court's review is limited in nature: “[t]he conferees have provided for a limited standard for appeal from the [special] master's decision and do not intend that this procedure be used frequently, but rather in those cases in which a truly arbitrary decision has been made.” *Gardner-Cook v. Sec'y of Health & Human Servs.*, 59 Fed. Cl. 38, 42 (2003) (quoting H.R. Conf. Rep. No. 386, 101st Cong., 1st Sess. 512-13, 517, reprinted in 1989 U.S.C.C.A.N. 1906, 3115, 3120).

This court uses three distinct standards of review in Vaccine Act cases, depending upon which aspect of a special master's decision is under scrutiny. *Id.*; see *Tebcherani ex rel. Tebcherani v. Sec'y of Dep't of Health & Human Servs.*, 55 Fed. Cl. 460, 472 (2003). The United States Court of Appeals for the Federal Circuit has made it clear that

[t]hese standards vary in application as well as degree of deference. Each standard applies to a different aspect of the judgment. Fact findings are reviewed . . . under the arbitrary and capricious standard; legal questions under the “not in accordance with law” standard; and

discretionary rulings under the abuse of discretion standard.

Saunders v. Sec’y of Dep’t of Health & Human Servs., 25 F.3d 1031, 1033 (Fed. Cir. 1994) (quoting *Munn v. Sec’y of Dep’t of Health & Human Servs.*, 970 F.2d 863, 870 n.10 (Fed. Cir. 1992)); *see also Gardner-Cook*, 59 Fed. Cl. at 42-43; *Huston v. Sec’y of Dep’t of Health & Human Servs.*, 39 Fed. Cl. 632, 635 (1997).

The first of the three standards, the arbitrary and capricious standard of review, is used to consider factual findings by the special master. The standard is narrow, and highly deferential. *Lampe v. Sec’y of Health & Human Servs.*, 219 F.3d 1357, 1360 (Fed. Cir. 2000); *Burns by Burns v. Sec’y of Dep’t of Health & Human Servs.*, 3 F.3d 415, 416 (Fed. Cir. 1993); *Rupert ex rel. Rupert v. Sec’y of Dep’t of Health & Human Servs.*, 55 Fed. Cl. 293, 297 (2003). A court engaged in such a review may not substitute its own judgment for that of the previous trier of fact, but instead “must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971); *Tebcherani*, 55 Fed. Cl. at 473 (stating that, when a court applies the arbitrary and capricious standard to findings of fact, it “does not review the substance of the underlying decision”). In other words, “[i]f the special master has considered the relevant evidence of record, drawn plausible inferences and articulated a rational basis for the decision, reversible error will be extremely difficult to demonstrate.” *Hines on Behalf of Sevier v. Sec’y of Dep’t of Health & Human Servs.*, 940 F.2d 1518, 1528 (Fed. Cir. 1991); *see also Burns*, 3 F.3d at 416; *De Bazan*, 70 Fed. Cl. at 691.

The second standard of review used in Vaccine Act cases, the “not in accordance with law” standard, applies to questions of law. This standard calls for a *de novo* review by the court. *Althen v. Sec’y of Health & Human Servs.*, 418 F.3d 1274, 1278-79 (Fed. Cir. 2005) (stating that “the trial court based its reversal on a conclusion that the decision was not in accordance with law. That was, of course, a legal conclusion based appropriately on *de novo* review” (internal citations omitted)); *De Bazan*, 70 Fed. Cl. at 691 (“In short, the Vaccine Act requires this court to analyze conclusions of law made by a special master under the Vaccine Act to determine whether they are ‘not in accordance with law.’” (quoting 42 U.S.C. § 300aa-12(e)(2)(B))). As this court has explained,

[j]udicial review of legal issues must result in a conclusion by the decision maker that the legally controlling directive involved, such as a statute or regulation, either does or does not permit the action under review. Therefore, review of legal conclusions is not a question of weighing the evidence and deference is not at issue.

Gardner-Cook, 59 Fed. Cl. at 44. The third and final standard, abuse of discretion, is used rarely – in cases in which, for example, the special master excludes evidence. *See Munn*, 970 F.2d at 870 n.10; *Gardner-Cook*, 59 Fed. Cl. at 43; *Tebcherani*, 55 Fed. Cl. at 472.

In conjunction with her motion for review, Ms. Ruiz argues that this court’s use of special masters in Vaccine Act cases is unconstitutional. This argument centers on the fact that special masters’ decisions are subject only to the limited review described above. Petitioner insists that, because special masters have broad decision-making powers, they serve as *de facto* “principal officers” of the United States. Ms. Ruiz insists that this is constitutionally impermissible, given that special masters are not subject to the appointment process for principal officers which is set forth in the United States Constitution.⁸ According to Ms. Ruiz,

[t]he power of a Court of Law to make *de novo* determinations is essential to the validity of the appointment of “inferior officers” of that court. In explaining why federal magistrates were “inferior officers” and, therefore, their appointments did not violate the Appointments Clause, the Supreme Court explained that every decision made by a magistrate was subject to *de novo* review by a district court judge and that the authority to make final determinations remains with the district court judge. A Vaccine Program special master’s fact finding is not subject to *de novo* review and

⁸/ Petitioner has also alleged that the court’s use of Vaccine Act special masters violates the Due Process clause of the Fifth Amendment. *See Mot.* at 11. Ms. Ruiz has not, however, provided any support for that assertion. The court therefore deems this argument to have been abandoned.

special masters do have the authority to make final determinations. The reviewing Court is not even authorized to take evidence. Vaccine Program special masters are not “inferior officers” as that term is contemplated in the Appointments Clause. Therefore, the Office of Special Masters as created under the 1989 technical amendments to the Vaccine Act is unconstitutional.

Mot. at 13 (internal citation omitted) (citing *United States v. Raddatz*, 447 U.S. 667, 681-82 (1980)). Relying on the United States Supreme Court’s decision in *Edmond v. United States*, 520 U.S. 651 (1997), petitioner argues that “*inferior officers are officers whose work is directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate.*” Reply at 5 (internal quotations omitted) (quoting *Edmond*, 520 U.S. at 662-63) (emphasis in original). Ms. Ruiz asserts that special masters “are empowered to render a final decision on behalf of the United States and have that power whether or not they are permitted to do so by other Executive officers.” *Id.* (internal quotations omitted) (quoting *Edmond*, 520 U.S. at 665). Thus, she insists that they serve as principal officers of the United States, and that their authorization to do so without being subjected to the appointment process is unconstitutional.

In response, the United States argues that “[c]ontrary to petitioner’s assertion, the special master does not have unchallenged authority to issue final determinations . . . as the statute makes clear, full review of special masters’ decisions by the Court of Federal Claims is available at the request of either party, just as petitioner has obtained here.” Resp. at 19-20 (citing 42 U.S.C. § 300aa-12(e)(1)).

The court agrees with respondent. There is no question that, under the Appointments Clause of Article II of the United States Constitution,

[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise

provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2. Thus, principal officers of the United States must be appointed by the President, and confirmed through the advice and consent of the United States Senate. “The prescribed manner of appointment for principal officers is also the default manner of appointment for inferior officers,” but under the second part of this provision, known as the “Excepting Clause,” the power to appoint inferior officers may alternatively be vested in the President alone, the Courts of Law, or the Heads of Departments. *Edmond*, 520 U.S. at 660. It is clear, based on this provision, that whether a particular officer is “principal” or “inferior” determines the manner in which he or she may be appointed. *See id.*

The Supreme Court has not identified an exclusive criterion for determining whether a particular officer is “principal” or “inferior” for purposes of the Appointments Clause. *Id.* at 661. However, the mere fact that an officer is “charged with exercising significant authority on behalf of the United States” does not, standing alone, render that officer “principal.” *Id.* (citing *Freytag v. Commissioner*, 501 U.S. 868, 881-82 (1991) (holding in turn that special trial judges which held “significan[t] . . . duties and discretion” were inferior officers)). Indeed, “[t]he exercise of significant authority pursuant to the laws of the United States marks, not the line between principal and inferior officer for Appointments Clause purposes, but rather . . . the line between officer and nonofficer.” *Id.* (internal quotations omitted) (quoting *Buckley v. Valeo*, 424 U.S. 1, 126 (1976)). Instead, the test is as follows:

Generally speaking, the term “inferior officer” connotes a relationship with some higher ranking officer or officers below the President: Whether one is an “inferior” officer depends on whether he has a superior. It is not enough that other officers may be identified who formally maintain a higher rank, or possess responsibilities of a greater magnitude. . . . Rather, in the context of a Clause designed to preserve political accountability relative to important Government assignments . . . “inferior

officers” are officers whose work is directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate.

Id. at 662-63.

Here, petitioner argues that Vaccine Act special masters are principal officers of the United States because they make findings which are subject to limited review only. That argument is unsupportable, however, because a similar contention has already been considered, and rejected, by the Supreme Court. In *Edmond*, the Court examined the role of judges of the Coast Guard Court of Criminal Appeals, and found that they were inferior officers because they were subject to control by both the Coast Guard Judge Advocate General and the Court of Appeals for the Armed Forces. 520 U.S. at 665-66. In reaching that conclusion, the Court noted that the Court of Appeals for the Armed Forces, which was charged with reviewing the decisions of the Coast Guard Court of Criminal Appeals, was constrained to a limited review only. That fact did not, however, persuade the Supreme Court that Criminal Appeals judges were “principal officers”:

That court reviews every decision of the Courts of Criminal Appeals in which: (a) the sentence extends to death; (b) the Judge Advocate General orders such review; or (c) the court itself grants review upon petition of the accused. The scope of review is narrower than that exercised by the Court of Criminal Appeals: so long as there is some competent evidence in the record to establish each element of the offense beyond a reasonable doubt, the Court of Appeals for the Armed Forces will not reevaluate the facts. *This limitation upon review does not in our opinion render the judges of the Court of Criminal Appeals principal officers. What is significant is that the judges of the Court of Criminal Appeals have no power to render a final decision on behalf of the United States unless permitted to do so by other Executive officers.*

Id. at 664-65 (internal citations omitted) (emphasis added).

Here, Ms. Ruiz is correct that the decisions of special masters in Vaccine Act cases are subject to limited review, in one regard, because not all of a special master's findings are reviewed by this court *de novo*. There is no question, however, that review is readily available in all Vaccine Act cases, and that decisions by special masters become final only when "permitted to do so" by the judges of the Court of Federal Claims. *See and compare Edmond*, 520 U.S. at 665. Indeed, the judges of this court retain the power, at all times, to reject the findings of a special master and to enter new findings if a particular case warrants such action. 42 U.S.C. § 300aa-12(e)(2). It is clear, therefore, that the special masters' work is indeed "directed and supervised" by the Court of Federal Claims. *Edmond*, 520 U.S. at 663. Under the reasoning of *Edmond*, then, special masters are inferior officers of the United States and may be appointed pursuant to the Excepting Clause. It follows that the court's use of special masters, as prescribed by the 1989 technical amendments to the Vaccine Act, is not unconstitutional.

II. Merits

This motion for review is brought under the auspices of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-1 *et seq.*, a federal statute which "provides an alternative to the traditional tort system for individuals who have suffered vaccine-related injuries."⁹ *Gardner-Cook*, 59 Fed. Cl. at 44 (citing *Lowry ex rel. Lowry v. Sec'y of Health & Human Servs.*, 189 F.3d 1378, 1381 (Fed. Cir. 1999); *Whitecotton by Whitecotton v. Sec'y of Health & Human Servs.*, 81 F.3d 1099, 1102 (Fed. Cir. 1996)). The Act was created in an effort to satisfy the federal government's responsibility "to ensure . . . that all children who are injured by vaccines have access to sufficient compensation for their injuries."

⁹/ In 1986, subchapter XIX of Chapter 6A, Title 42 of the United States Code established the National Vaccine program within the United States Department of Health and Human Services. *Munn v. Sec'y of Dep't of Health & Human Servs.*, 970 F.2d 863, 865 (Fed. Cir. 1992). The program, which became effective in October 1988, was established "'to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines.'" *Id.* (quoting 42 U.S.C. § 300aa-1). Subchapter XIX further established the National Vaccine Injury Compensation Program, "under which compensation may be paid for a vaccine-related injury or death.'" *Id.* (quoting 42 U.S.C. § 300aa-10(a)).

Snyder by Snyder v. Sec’y of Dep’t of Health & Human Servs., 36 Fed. Cl. 461, 466 (1996) (quoting H.R. Rep. No. 908, 99th Cong., 2d Sess. 5, *reprinted in* 1986 U.S.C.C.A.N. 6287, 6346). The Vaccine Act is intended to establish a procedure that administers awards “quickly, easily, and with certainty and generosity.” *Bradley v. Sec’y of Dep’t of Health & Human Servs.*, 24 Cl. Ct. 641, 644 (1991) (quoting H.R. Rep. No. 908, 99th Cong., 2d Sess. 3, *reprinted in* 1986 U.S.C.C.A.N. 6287, 6344).

The Vaccine Act provides two methods of recovery for petitioners who believe that they have suffered an injury as a result of a vaccine. *See* 42 U.S.C. § 300aa-11(c). First, a petitioner who has received a vaccination listed on the Act’s Vaccine Injury Table may recover for any resulting illness, disability, injury or condition which is also listed on that Table.¹⁰ *Id.*; *see also* 42 U.S.C. § 300aa-14(a); 42 C.F.R. § 100.3 (2006) (current version of the Vaccine Injury Table). To recover damages on a so-called “Table” claim, the petitioner must show that the first symptom or manifestation of the Table injury occurred within the time period set forth on the Table. 42 U.S.C. § 300aa-11(c)(1)(C)(i); *Pafford v. Sec’y of Health & Human Servs.*, 451 F.3d 1352, 1355 (Fed. Cir. 2006); *Capizzano v. Sec’y of Health & Human Servs.*, 440 F.3d 1317, 1319 (Fed. Cir. 2006). Once a petitioner makes the requisite showings, and sets forth a prima facie case of entitlement to compensation, he or she is entitled to a presumption of causation. *Pafford*, 451 F.3d at 1355; *see also De Bazan*, 70 Fed. Cl. at 691-92. The government may rebut this presumption, however, by “showing that the injury complained of resulted from some factor unrelated to the vaccine.” *Turner v. Sec’y of Health & Human Servs.*, 268 F.3d 1334, 1337 (Fed. Cir. 2001); *accord* 42 U.S.C. § 300aa-13(a)(1)(B); *Pafford*, 451 F.3d at 1355.

Second, a petitioner who has received a vaccination listed on the Table, but whose vaccine-related injuries do not meet Table requirements, may recover under the “off-Table” theory of recovery. 42 U.S.C. § 300aa-11(c)(1)(C)(ii), 300aa-13(a)(1)(A); *Gardner-Cook*, 59 Fed. Cl. at 44. Under this theory, a petitioner may establish a prima facie case of entitlement to compensation by showing, by a preponderance of the evidence, that a Table vaccine actually caused the petitioner to sustain an illness, disability, injury or condition which is not listed on the Table,

^{10/} A petitioner may also be entitled to compensation if a Table vaccination results in significant aggravation of a pre-existing Table injury. *See* 42 U.S.C. § 300aa-11(c)(1)(C)(i).

or that first appeared outside the time limits set by the Table. 42 U.S.C. § 300aa-11(c)(1)(C)(ii); *Pafford*, 451 F.3d at 1355; *Gardner-Cook*, 59 Fed. Cl. at 44. A petitioner’s burden of proof in an off-Table case is a heavy one, which requires “a medical theory causally connecting the vaccination and the injury.” *Gardner-Cook*, 59 Fed. Cl. at 45 (citing *Whitecotton*, 81 F.3d at 1102 and quoting *Grant v. Sec’y of Dep’t of Health & Human Servs.*, 956 F.2d 1144, 1148 (Fed. Cir. 1992)).

Here, the parties agree that petitioner received the hepatitis B vaccine, a vaccine which is listed on the Vaccine Table.¹¹ Initially, Ms. Ruiz requested compensation based on her assertion that the vaccine caused her to suffer from anaphylactic shock and a neurological condition. Later, however, petitioner conceded that she was unable to present expert medical testimony in support of those aspects of her petition, and the special master rejected those theories of recovery. Ms. Ruiz does not challenge those findings. Instead, petitioner argues that she is entitled to compensation because the hepatitis B vaccine caused her to suffer from a psychological injury. That type of condition does not appear on the Vaccine Table. Thus, the portion of Ms. Ruiz’s petition now under review asserts an “off-Table” Vaccine Act claim. *See and compare De Bazan*, 70 Fed. Cl. at 691 (stating that because the injury alleged was not listed on the Vaccine Injury Table, the petitioner had asserted an “off-Table” claim). Accordingly, to establish her right to recovery, Ms. Ruiz must prove, by a preponderance of the evidence, that the hepatitis B vaccination actually caused or significantly aggravated her psychological condition. *Althen*, 418 F.3d at 1278; *De Bazan*, 70 Fed. Cl. at 691.

In the proceeding below, the special master held that Ms. Ruiz had failed to establish causation for her off-Table injury claim, because “[n]o medical doctor diagnosed [Ms. Ruiz’s] psychological problems [as being] caused by the vaccination.” Decision at 11. Ms. Ruiz disagrees. She argues that the record holds substantial evidence that the vaccine caused her injury. In response, the Secretary contends that, at most, the evidence presented confirms the temporal proximity between Ms. Ruiz’s hepatitis B vaccination and the onset of her psychological condition. In respondent’s view, the record fails to address the critical question of whether the hepatitis B vaccine actually caused that condition.

^{11/} The hepatitis B vaccine has been listed on the Vaccine Injury Table since August 6, 1997. 42 C.F.R. § 100.3(c)(2); *see also Gardner-Cook*, 59 Fed. Cl. at 45.

The Secretary insists that the dismissal of Ms. Ruiz’s petition is supported by the evidence presented, and must be affirmed.

It is well-settled that, although the Vaccine Act relaxes the burden to prove causation in petitions which allege Table injuries, it does not relax that burden for claims based on “off-Table” injuries. *See Grant v. Sec’y of Dep’t of Health & Human Servs.*, 956 F.2d 1144, 1148 (Fed. Cir. 1992). For that reason, a petitioner who hopes to recover for an “off-Table” claim must establish causation-in-fact. *See* 42 U.S.C. §§ 300aa-11(c)(1)(C)(ii), 300aa-13(a)(1); *Pafford*, 451 F.3d at 1355. This requires “preponderant evidence both that [the] vaccination[] [was] a substantial factor in causing the illness, disability, injury or condition and that the harm would not have occurred in the absence of the vaccination.” *Pafford*, 451 F.3d at 1355 (citing *Shyface v. Sec’y of Health & Human Servs.*, 165 F.3d 1344, 1352 (Fed. Cir. 1999)). The vaccination “must be a ‘substantial factor’” in bringing about the injury, but “it need not be the sole factor or even the predominant factor.” *Id.* at 1357 (quoting and summarizing holding of *Shyface*, 165 F.3d at 1352-53).

The Federal Circuit recently addressed the evidentiary burden associated with causation in “off-Table” cases. That court explained that a petitioner who wishes to demonstrate that a vaccination brought about his or her injury must present

- (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, 418 F.3d at 1278 (explaining that “[t]o meet the preponderance standard,” a petitioner “must show a medical theory causally connecting the vaccination and the injury,” and that “[a] persuasive medical theory is demonstrated by proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury, the logical sequence being supported by reputable medical or scientific explanation, *i.e.*, evidence in the form of scientific studies or expert medical testimony” (internal quotations and brackets omitted)); *see also Pafford*, 451 F.3d at 1355; *Capizzano*, 440 F.3d at 1324. In raising evidence related to the three factors, “these prongs must cumulatively show that the vaccination was a

‘but-for’ cause of the harm, rather than just an insubstantial contributor in, or one among several possible causes of, the harm.” *Pafford*, 451 F.3d at 1355. Further, “[a]lthough probative, neither a mere showing of a proximate temporal relationship between vaccination and injury, nor a simplistic elimination of other potential causes of the injury suffices, without more, to meet the burden of showing actual causation.” *Althen*, 418 F.3d at 1278 (citing *Grant*, 956 F.2d at 1149). Similarly, the special master may not make a finding of causation which is based on the claims of a petitioner alone, and is not substantiated by medical records or medical opinion. *See* 42 U.S.C. § 300aa-13(a)(1)(B). Only if a petitioner presents adequate evidence on the three essential aspects of causation, and thus makes a prima facie case for liability, does the burden shift to the Secretary to prove, also by a preponderance of the evidence, an alternate cause of the alleged injury. *See Althen*, 418 F.3d at 1278.

Here, there is no question that petitioner has presented medical records from a number of sources which identify and describe her psychological injury. Dr. Kumar’s notes, for example, clearly record his conclusion that Ms. Ruiz was suffering from a psychogenic tremor. *See* Ex. 10 at 3-4. Dr. Shannon diagnosed petitioner as suffering from post-traumatic stress disorder. Ex. 11 at 1-2. Dr. Denison also found that petitioner was suffering from a mood disorder. Ex. 13 at 12. The records from Dr. Friedman, while focused mainly on a neurological cause for petitioner’s physical symptoms, did note that Ms. Ruiz’s movement disorder was somewhat unusual. Ex. 14 at 2. Taken in the light most favorable to petitioner, the notations to that effect may be viewed as support for the theory that Ms. Ruiz was suffering from a psychological injury. *See also* Ex. 9 at 13 (recounting Dr. Friedman’s belief that petitioner was suffering from a physical disorder “at least to some extent”); Ex. 9 at 14 (recounting fact that Dr. Friedman did not observe unusual movements in petitioner’s left leg until the doctor began discussing the symptoms in her right leg and her belief that petitioner’s symptoms could be caused by stress). It is also true, and indeed, the Secretary concedes, that several items of record evidence confirm the temporal proximity between petitioner’s second dose of the hepatitis B vaccine and the emergence of her psychological injury.

Unfortunately, however, the court must agree with respondent that the record goes no further in substantiating Ms. Ruiz’s claim. Ms. Ruiz insists that several of her doctors identified a causal link between the hepatitis B vaccine and the emergence of her psychological condition. The record, however, belies that

assertion. Contrary to petitioner's claim, several of Ms. Ruiz's doctors concluded that it was her physical illness, and particularly her involuntary movement disorder, that caused her psychological condition. *See* Ex. 11 at 2 (record from Dr. Shannon identifying a "neurological event" as a "stressor" on Ms. Ruiz which related to her post-traumatic stress disorder); Ex. 13 at 12 (record from Dr. Denison in which the psychologist diagnosed petitioner with a "mood [disorder] due to med[ical] cond[ition]"). None of the evidence from those doctors tends to show that the hepatitis B vaccine was a "but for" cause of Ms. Ruiz's psychological injury. *Pafford*, 451 F.3d at 1355. Moreover, the record as a whole makes clear that none of those experts was able to develop a medical theory to explain how petitioner's psychological disorder came about, whether as a direct result of the vaccination, her physical condition, or otherwise. *See Althen*, 418 F.3d at 1278. Nor did any of those experts describe a sequence of cause and effect which would explain the emergence of that condition. *Id.*

Perhaps in recognition of this void in the evidence, petitioner contends that Dr. Denison's February 2007 letter addresses the critical issue of whether the hepatitis B vaccine actually caused her psychological injury. She insists that the special master erred when she struck the second page of that letter from the record. Ms. Ruiz is certainly correct that Dr. Denison's letter draws a connection between her vaccination and the onset of her psychological ailments. However, it must be noted that this letter was written more than five years after Dr. Denison treated Ms. Ruiz. In addition, the letter makes a finding related to causation which is not present in the records he created contemporaneous to his visits with petitioner. While the February 2007 letter memorializes Dr. Denison's belief that petitioner suffered from a psychological condition due to her receipt of the hepatitis B vaccine and subsequent "immunization reaction," his treatment notes state only that Ms. Ruiz suffered from a "mood [disorder] due to med[ical] cond[ition]." Ex. 13 at 12. The fact that Dr. Denison did not identify the hepatitis B vaccine as the cause of Ms. Ruiz's psychological injury until well after his treatment relationship with petitioner had ended undermines the persuasiveness of his findings. *See Campbell*, 69 Fed. Cl. at 779 (stating that "where later testimony conflicts with earlier contemporaneous documents, courts generally give the contemporaneous documentation more weight"); *see also Cucuras v. Sec'y of Dep't of Health & Human Servs.*, 993 F.2d 1525, 1528 (Fed. Cir. 1993) (explaining that "the Supreme Court counsels that oral testimony in conflict with contemporaneous documentary evidence deserves little weight") (citing *United States v. United States Gypsum Co.*, 333 U.S. 364, 396 (1947); *Montgomery Coca-Cola Bottling Co. v. United*

States, 615 F.2d 1318, 1328 (Ct. Cl. 1980)); *Burns*, 3 F.3d at 417. This is true because

[m]edical records, in general, warrant consideration as trustworthy evidence. The records contain information supplied to or by health professionals to facilitate diagnosis and treatment of medical conditions. With proper treatment hanging in the balance, accuracy has an extra premium. These records are also generally contemporaneous to the medical events.

Cucuras, 993 F.2d at 1528. Moreover, Dr. Denison personally qualified his comments on the matter of causation by stating that, because he was not trained in neurology, he was not qualified to make a definitive diagnosis of Ms. Ruiz's condition. *See Ex. 15 at 2*. That fact also diminishes the persuasiveness of his findings.

Further, and more importantly, even when Dr. Denison's February 2007 letter is considered in its entirety, it does little to assist petitioner in satisfying the standard of proof regarding causation which is applicable to her claim. Again, there is no question that, in an off-Table case such as this one, a petitioner must produce evidence which sets forth a "medical theory causally connecting the vaccination and the injury" and "a logical sequence of cause and effect showing that the vaccination was the reason for the injury." *Althen*, 418 F.3d at 1278. Here, the only statement in Dr. Denison's letter which supports Ms. Ruiz's claim directly is the assertion that "the ongoing physical and psychological condition was a direct result of the immunization reaction." *Ex. 15 at 2*. This statement is devoid of any supporting evidence or explanation, and it does not set forth a medical theory regarding the manner in which Ms. Ruiz's condition came about, or a sequence of cause and effect which would explain how the vaccine brought about that injury. *Althen*, 418 F.3d at 1278; *see and compare Gardner-Cook*, 59 Fed. Cl. at 48 (explaining that evidence regarding the temporal proximity between a vaccination and the onset of an illness is not enough to sustain a compensation claim). Thus, the court agrees with the Secretary that the special master's decision to strike that evidence, even if erroneous, was harmless. *See Tebcherani*, 55 Fed. Cl. at 478 (stating that "a failure to consider . . . evidence might be considered harmless error if it could be shown that the failure would not have made any difference with regard to the outcome of the case") (citing *Johnson v. Sec'y of*

Health and Human Servs., 33 Fed. Cl. 712, 728-29 (1995), *aff'd*, 99 F.3d 1160 (Fed. Cir. 1996) (table)); *Cox v. Sec'y of Dep't of Health and Human Servs.*, 30 Fed. Cl. 136, 143 (1993) (stating that “while the special master abused his discretion by striking” an expert’s medical report from the record, “it was harmless error to do so,” because the court’s own review of that report showed that it “deserve[d] little or no weight in light of the entire record”); *see also Morris v. Sec'y of Dep't of Health and Human Servs.*, 57 Fed. Cl. 383, 391 (2003).

There is no doubt, based upon the record presented, that Ms. Ruiz’s psychological condition emerged around the same time that petitioner received the second dose of the hepatitis B vaccine. The court may not, however, grant relief to Ms. Ruiz based on that temporal proximity alone. Absent proof that the hepatitis B vaccine actually caused or significantly aggravated her psychological condition, Ms. Ruiz has not established her right to compensation under the Vaccine Act. *Althen*, 418 F.3d at 1278. The special master’s decision to deny relief in this case based on inadequate proof of causation was proper. The decision is affirmed.

CONCLUSION

For the reasons stated above, the court concludes that the special master’s decision in this case was not arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. Accordingly, it is hereby **ORDERED** that petitioner’s Motion for Review, filed April 13, 2007, is **DENIED**. The special master’s decision is **SUSTAINED**, and the Clerk’s office is directed to **ENTER** judgment dismissing the petition. No costs.

/s/Lynn J. Bush

LYNN J. BUSH

Judge