

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: July 19, 2007)

DO NOT PUBLISH

JULIO ACEVEDO and YLUMINADA MOJICA,)
as legal representatives of their son,)
JOSHUA ACEVEDO,)
))
Petitioners,)
))
v.)
))
SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
))
Respondent.)

No. 07-0376V
Dismissal of a Duplicate Petition

DECISION¹

On July 13, 2007, the clerk of court received a petition and accompanying documents in this case. The clerk of court processed the petition and accompanying documents as a new case, assigning the case docket number 07-0376V. However, on July 3, 2007, the clerk of court had received an identical petition and nearly identical accompanying documents. The clerk of court had processed the identical petition and nearly identical accompanying documents as a new case, assigning the case docket number 07-0501V.²

¹ The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

² Based upon the dates that the clerk of court processed the cases, the docket numbers of the cases appear to be in reverse order. However, the clerk of court assigned docket number 07-0376V to the case filed on July 13, 2007, because docket number 07-0376V was the next available docket number—even though the docket number was out of sequence—based upon an earlier administrative error in the clerk’s office.

The special master convened an informal, yet substantive, status conference on July 18, 2007. Mindy Michaels Roth, Esq. (Ms. Roth), appeared for petitioners. Vincent J. Matanoski, Esq. (Mr. Matanoski), appeared for respondent. Both counsel acknowledged candidly that this case is a duplicate of the case filed under docket number 07-0501V. The duplication in filing occurred obviously as a consequence of Ms. Roth's appropriate, diligent attempt to correct a significant delivery error that FedEx committed with a petition that Ms. Roth deposited with FedEx on June 25, 2007. *See, e.g., Acevedo v. Secretary of HHS*, No. 07-0501V, Affidavit of Mindy Michaels Roth, filed July 3, 2007, Exhibit B.

Vaccine Rule 2(d)(2) provides: "Only one petition may be filed with respect to each administration of a vaccine." Because this case is a duplicate of the case filed under docket number 07-0501V, the special master is constrained to dismiss this case. The parties agree.

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing this case as a duplicate of the case filed under docket number 07-0501V.

The clerk of court shall refund to petitioners the filing fee associated with this case.

The clerk of court shall send petitioners' copy of this decision to petitioners by overnight express delivery.

John F. Edwards
Special Master