

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-715V

Filed: May 17, 2011

ROSE COTTER,)	
)	UNPUBLISHED
Petitioner,)	
)	
v.)	Motion for Dismissal Decision;
)	Influenza vaccine;
)	Fibrositis; Meniere's disease
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

Howard S. Gold, Wellesley Hills, MA, for Petitioner.

Ann D Martin, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Special Master.

On October 13, 2009, Rose Cotter ("Petitioner") filed a petition pursuant to the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 et seq. (2006) ("Vaccine Act"). Petitioner alleged that an influenza vaccination, which she received on October 23, 2006, caused her to suffer from demyelinating lesions and an exacerbation of fibrositis and Meniere's Disease. Petition at 1.

On May 5, 2011, Petitioner filed a motion for a decision dismissing her petition. Petitioner stated in her motion that she would not be able to provide an expert report to support her claim. Pet'r Mot. at 1. Accordingly, Petitioner requested that the undersigned dismiss her petition. Id.

To receive compensation under the Vaccine Act, Petitioner must prove either 1) that she suffered a "Table Injury" -- i.e., an injury falling within the Vaccine Injury Table -- corresponding to one of his vaccinations, or 2) that she 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 Petitioner suffered a "Table Injury." Furthermore, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Petitioner's injury was caused by a vaccination.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction "of any information furnished by that party (1) that is trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Rules of the United States Court of Federal Claims (RCFC), Appendix B, Vaccine Rule 18(b). In the absence of a timely objection, the entire document will be made publicly available.

Under the Vaccine Act, a petitioner may not be awarded compensation 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 the medical records are insufficient to establish entitlement to compensation, a medical opinion must be offered in support of Petitioner's claims. Petitioner, however, has declined to offer such an opinion.

Therefore, the only alternative remains to **DENY** this petition. **Thus, this case is dismissed for insufficient proof. In the absence of a motion for review, the Clerk is directed to enter judgment accordingly.**

IT IS SO ORDERED.

s/ Dee Lord
Dee Lord
Special Master