

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-570V

April 29, 2011

Not to be Published

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JEFF LONG,

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Petitioner,

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v.

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Motion for decision on the record; no expert report

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SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Isaiah Kalinowski, Sarasota, FL for petitioner.

Lisa A. Watts, Washington, DC, for respondent.

**MILLMAN, Special Master**

## **DECISION**<sup>1</sup>

On August 23, 2010, petitioner filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, alleging that he had Guillain-Barré syndrome (GBS) after receiving HiB, Menactra, and Pneumovax vaccines.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. Petitioner has 14 days within which to move to redact a decision on one of these bases.

On April 29, 2011, petitioner filed a Motion for a Decision on the Written Record, stating that “he will likely be unable to retain an expert witness to opine in support of vaccine causation of his injury” and petitioner “does not deem it worthwhile to pursue the Petition with expert witnesses.” Motion, p. 1.

The record shows that petitioner’s contemporaneous medical history to numerous doctors was that he developed neurological symptoms a week to a week and one-half after having a viral gastroenteritis, which was three months after he received his vaccinations.

This is a causation in fact case. As the undersigned explained to petitioner’s counsel during telephonic status conferences on November 10, 2010, January 6, 2011, February 16, 2011, and April 21, 2011, petitioner’s assertion in his petition that onset occurred in mid-November 2010 contradicts his histories to numerous doctors that onset occurred in early January 2011, and that the occurrence of a viral gastroenteritis a week to a week and one-half before the onset of neurologic symptoms was going to make his finding an expert to opine that vaccinations administered three months earlier, and not the gastroenteritis, were the cause of his GBS. Without an expert to opine in petitioner’s favor, petitioner has failed to make a prima facie case. The undersigned hereby orders the petition dismissed.

### **DISCUSSION**

To satisfy his burden of proving causation in fact, petitioner must prove by preponderant evidence "(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 HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec’y of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

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[.]”

Petitioner has not provided any proof to satisfy the Althen three prongs. Section 300a-13(a) of the Vaccine Act states that the special master may not rule in favor of petitioner “based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” Petitioner has not filed an expert medical opinion in support of his allegations and the medical records do not substantiate his allegations. He has not made a prima facie case of causation in fact.

### CONCLUSION

Petitioner’s petition is dismissed. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

April 29, 2011  
DATE

s/Laura D. Millman  
Laura D. Millman  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party’s filing a notice renouncing the right to seek review.