

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MICHELLE KRISTINE STALEY,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 06-574V
Special Master Christian J. Moran

Filed: January 9, 2007

To be published: hepatitis B, statute
of limitations

DECISION DISMISSING PETITION¹

On August 7, 2006, the Clerk’s Office filed a petition submitted by Michelle Kristine Staley (“Michelle”). The respondent filed a motion to dismiss the petition for lack of jurisdiction on the ground that the statute of limitations bars the action. For the reasons stated below, this motion is GRANTED.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

I. Facts and Procedural History

In essence, the petition alleges that Michelle's receipt of the hepatitis B vaccination caused her harm.² The petition alleges that Michelle received hepatitis B vaccinations in 1994 and 1995. Petition at 1b. Following the first set of vaccinations in May or June 1994, Michelle was unusually tired. Petition at 2. She sought treatment for this fatigue in December 1994. Petition at 2.

Michelle received another dose of the hepatitis B vaccine in February 1995. Following this immunization, she was so exhausted that she could not work. Petition at 2. In August 1995, Michelle visited Dr. James Gracheck who suggested that she might suffer from, among other conditions, chronic fatigue syndrome.

Medical records submitted with the petition indicate that at least eight other doctors diagnosed Michelle with chronic fatigue syndrome. According to the petition, these doctors overlooked the connection between Michelle's ill health and the hepatitis B vaccine. Petition at 3.

However, in August 2003, Dr. Waisbren diagnosed Michelle with "Chronic Autoimmune Encephalomyelitis" that was caused by the hepatitis B vaccine. Id. Apparently, this report was the first time a medical provider informed the Staleys that Michelle's condition was caused by the hepatitis B vaccine.

In addition to asserting information about Michelle's health, the petition also states that the Staleys have attempted to protect Michelle's interests. For example, Michelle filed for social security disability in 2001, researched her condition on the internet, and sought legal assistance from at least 30 attorneys. Petition at 4-5. The petition reports that some attorneys informed them that Michelle would not receive compensation because the statute of limitations bars any action. Petition at 7-8. Aware of this potential problem, Mrs. Staley and Michelle included in the petition a plea that this case not be dismissed because as individuals without medical training they could not be expected to know that the hepatitis B vaccine caused Michelle's condition. Petition at 8. The petition concludes with a request for compensation.

After the petition was filed, a status conference was conducted on October 3, 2006, during which Mrs. Staley and the respondent discussed whether the statute of limitations barred

² Although Michelle signed the petition, her mother, Karen S. Staley ("Mrs. Staley") prepared it. Petition at 14. Nothing suggests that Mrs. Staley is an attorney and the petition lacks many attributes, such as pagination and labeling of the exhibits, that legal professionals routinely supply. Nevertheless, as stated in the text, the complaint sets forth the basic chronology with enough clarity that the motion to dismiss is resolved. Given that the complaint is dismissed, it is unnecessary to determine whether Mrs. Staley may represent Michelle and it is also unnecessary to clean up the petition.

this action. Following the status conference, an order directed respondent to file a motion to dismiss by November 3, 2006, and allowed petitioner 30 days to respond. On November 3, 2006, respondent filed a motion to dismiss, presenting its argument for dismissal. No one has submitted a response for Michelle.

II. Analysis

On August 6, 1997, pursuant to a delegation of authority found in 42 U.S.C. § 300aa-14(c), the Secretary of Health and Human Services added hepatitis B to the list of vaccines covered by the Vaccine Program. 62 Fed. Reg. 52,724 (Oct. 9, 1997). This regulation also provided that a person who received the hepatitis B vaccine in the eight years before August 6, 1997, could file a lawsuit within two years, or by August 6, 1999. *Id.*; see also 42 U.S.C. § 300aa-16(b) (providing that when the Vaccine Injury Table is revised, a petition may be filed “not later than 2 years after the effective date of the revision”).

According to these provisions, because Michelle received the hepatitis B vaccinations before August 6, 1997, she could file a petition seeking compensation at any time before August 6, 1999. Therefore, because the petition in this case was not filed until August 7, 2006, the time for filing expired.

As mentioned, neither Mrs. Staley nor Michelle filed a response to the motion to dismiss. However, the petition, itself, raises arguments about the statute of limitations and, during the October 3, 2006 status conference, Mrs. Staley presented similar points that are addressed for completeness. Mrs. Staley makes two types of arguments. First, Mrs. Staley argues that Michelle’s case is meritorious and should not be dismissed on a technicality, like a statute of limitations. Second, Mrs. Staley also argues that Michelle’s case complies with the statute of limitations because the petition was filed within three years of when the Staleys first discovered that the hepatitis B vaccine was responsible for Michelle’s injury. Both points are unpersuasive.

Mrs. Staley questions the justification for the statute of limitations. Such questions are not unusual. “Statutes of limitations always have vexed the philosophical mind for it is difficult to fit them into a completely logical and symmetrical system of law.” Chase Securities Corp. v. Donaldson, 325 U.S. 304, 313 (1945).

The Supreme Court has explained the purpose and origin of statutes of limitations:

Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost. Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342, 349, 64

S.Ct. 582, 586, 88 L.Ed. 788. They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and unavoidable delay.

Chase Securities, 325 U.S. at 314. Like other defendants in civil lawsuits, the United States is not required to defend itself when the events took place long ago. Hart v. United States, 910 F.2d 815, 818 (Fed. Cir. 1990).

In enforcing statutes of limitations, the Supreme Court has been mindful that a statute of limitations may exclude otherwise meritorious claims. Board of Regents of University of State of N. Y. v. Tomanio, 446 U.S. 478, 487 (1980) (stating “in the judgment of most legislatures and courts, there comes a point at which the delay of a plaintiff in asserting a claim is sufficiently likely either to impair the accuracy of the fact-finding process or to upset settled expectations that a substantive claim will be barred without respect to whether it is meritorious.”); Kavanagh v. Noble, 332 U.S. 535, 539 (1947) (stating statutes of limitations “are established to cut off rights, justifiable or not, that might otherwise be asserted”) (emphasis added).

Federal tribunals may not disregard statutes of limitations. Kavanagh, 332 U.S. at 539 (stating statutes of limitations “must be strictly adhered to by the judiciary”). “Courts are not free to engraft exceptions on the statute of limitations.” Hart, 910 F.2d at 819.

These binding authorities also teach that fact-finding tribunals, such as the Office of Special Masters, may not question the wisdom of choices made by Congress. “If Congress explicitly puts a limit upon the time for enforcing a right which it created, there is an end of the matter. The Congressional statute of limitation is definitive.” Holmberg v. Armbrrecht, 327 U.S. 392, 395 (1945).³ Many other cases also defer to Congress’s prerogative in setting the statute of limitations. See, e.g., Kavanagh, 332 U.S. at 539 (stating “it is not our province to speculate as to why Congress established a shorter period of limitations” for one cause of action than for another cause of action); Hart, 910 F.2d at 819 (stating Congress “may lengthen the time for bringing suit against the government.”); see also Beck., 924 F.2d at 1034 (stating “Our duty is limited to interpreting the statute as it was enacted, not as it arguably should have been enacted.”).

³ Although Holmberg states that statutes of limitations do not bar actions based in equity, this exception does not assist Michelle. Holmberg, 327 U.S. at 396. Actions for compensation pursuant to the Vaccine Act are actions at law, not actions in equity. See Brice v. Sec’y of Health & Human Servs., 240 F.3d 1367, 1372 (Fed. Cir. 2001) (stating “a claim under the Vaccine Act is similar to a traditional tort claim in the sense that it seeks monetary recovery from an injury that was traditionally redressed by tort law.”). The Court of Federal Claims lacks general equitable powers. Beck ex rel. Beck v. Sec’y of Health & Human Servs., 924 F.2d 1029, 1035 (Fed. Cir. 1991).

Consequently, when a petition is filed outside of the statute of limitations, the petition must be dismissed. To avoid this result, Mrs. Staley argues that Michelle's case, in fact, was filed within the statute of limitations. However, this argument also fails.

Mrs. Staley argues that she complied with the statute of limitations by acting upon information once she received it. Specifically, Mrs. Staley asserts that no one knew to file a petition alleging that the vaccine caused Michelle's injuries until Dr. Waisbren informed them that the vaccine was the cause. According to Mrs. Staley, she learned this critical information in August 2003, and, by submitting the petition on August 7, 2006, she complied with the three year statute of limitation. (Mrs. Staley, apparently, is referring to the statute of limitations found at 42 U.S.C. § 300aa-16(a)(2).) Or, to phrase Mrs. Staley's argument using legal terminology, Michelle's claim did not accrue until the information provided by Dr. Waisbren led Mrs. Staley to discover Michelle's cause of action in August 2003. ("Accrue" means "to come into existence." Black's Law Dictionary 8th ed.).

Although this argument has appeal, decisions by the United States Supreme Court and the United States Court of Appeals for the Federal Circuit reject it. In short, Mrs. Staley's claim accrued when she knew that she was injured regardless of whether she knew the cause of that injury. Weddell v. Sec'y of Health & Human Servs., 100 F.3d 929, 931 (Fed. Cir. 1996). The statute of limitations contained in the Vaccine Act defines the accrual date, for cases alleging the vaccine caused an injury, as the "date of the occurrence of the first symptom or manifestation of onset." 42 U.S.C. § 300aa-16(a)(2). This date starts the running of the statute of limitations "even if the petitioner reasonably would not have known at that time that the vaccine had caused an injury." Brice v. Sec'y of Health & Human Servs., 240 F.3d 1367, 1373 (Fed. Cir. 2001). Here, the petition asserts that Michelle suffered an injury in 1994 or 1995. Thus, her petition, which was filed in 2006, is out of time.

By claiming ignorance of the ability to file a cause of action, Michelle's case is analogous to United States v. Kubrick, 444 U.S. 111 (1979). In Kubrick, Mr. Kubrick, a veteran, suffered deafness because the staff at a hospital administered by the Veterans Administration committed medical malpractice. Kubrick, 444 U.S. at 114-15, 122. Mr. Kubrick eventually filed a lawsuit pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2801. The Supreme Court held that the statute of limitations barred Mr. Kubrick from recovering compensation. In reaching this conclusion, the Supreme Court considered and rejected Mr. Kubrick's argument that for a certain amount of time, although he knew he was injured, he did not know the medical cause of his injury and did not know the legal significance of his injury. The Supreme Court stated:

A plaintiff such as Kubrick, armed with the facts about the harm done to him, can protect himself by seeking advice in the medical and legal community. To excuse him from promptly doing so by postponing the accrual of his claim would undermine the purpose of the limitations statute, which is to require the reasonably diligent presentation of tort claims against the Government.

Kubrick, 444 U.S. at 123. The reasoning that required the dismissal of Mr. Kubrick's lawsuit also requires the dismissal of the petition for Michelle.

Here, the petition was filed after the statute of limitations expired. Arguments that Michelle's case either should be adjudicated without regard for the statute of limitation or that her case complies with the statute of limitations are untenable. In the absence of a motion for review filed within 30 days, the Clerk's Office is directed to dismiss the petition.

IT IS SO ORDERED.

Christian J. Moran
Special Master