

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 12-672V  
Filed: December 28, 2012**

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ROBBIE E. SALTERS	*	
	*	Dismissal Decision;
Petitioner,	*	RCFC 12(b)(6); Vaccine Not
	*	Covered
v.	*	
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	

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

**Vowell**, Special Master:

On October 3, 2012, Robbie E. Salters [“petitioner”] filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, *et seq.*<sup>2</sup> [the “Vaccine Act” or “Program”], alleging that he suffered swelling of his left arm, hives on his right hand, and vomiting as a result of the shingles vaccine he received on August 7, 2012. Petition at 1. Petitioner further alleged that the hives and vomiting lasted “about a week” and the swelling “about a month.” *Id.*

In the initial status conference, held on November 7, 2012, I informed petitioner of two issues with his claim. First, I explained that the shingles vaccine is not listed on the Vaccine Injury Table.<sup>3</sup> Second, I noted that even if petitioner had received a Table

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

<sup>3</sup> I further explained that the Vaccine Injury Table consists only of those vaccines recommended for routine administration to children and that the shingles vaccine has not been so recommended. Additionally, as respondent states in her Motion to Dismiss, unlike those vaccines listed on the Table, the shingles vaccine does not come with a congressionally-approved excise tax intended to provide “funds for the payment of compensation related to any vaccine that the Secretary of the United States Department of Health and Human Services adds to the Table.” Motion to Dismiss at 2 (citing 26 U.S.C.

vaccine, his injury must be one that persists “for more than 6 months after the administration of the vaccine.” § 11(c)(1)(D)(i). In sum, I informed petitioner that I could not decide entitlement or award compensation because, on either ground, I do not have jurisdiction over this case.

On November 19, 2012, petitioner submitted a statement alleging that he continues to suffer residual effects of the shingles vaccine, including restlessness, weakness, arm pain, and occasional vomiting. Thereafter, on December 6, 2012, respondent filed a Motion to Dismiss, asserting that, because petitioner seeks compensation for a vaccine that is not covered by the Vaccine Act, his claim “must be dismissed for failure to state a claim upon which relief may be granted, pursuant to [Rule 12(b)(6) of the Rules of the United States Court of Federal Claims].”<sup>4</sup> Motion to Dismiss at 1.

In her Motion to Dismiss, respondent correctly states that “[t]o be entitled to compensation under the Vaccine Act, a petitioner must demonstrate that he ‘received a vaccine set forth in the Vaccine Injury Table.’” *Id.* (citing § 11(c)(1)(A)). Here, petitioner alleges that his injuries were caused by the shingles vaccine he received on August 7, 2012. Petition at 1. The shingles vaccine is not listed on the Vaccine Injury Table. See 42 C.F.R. § 100.3(a). As petitioner has failed to demonstrate receipt of a Table vaccine, his case must be dismissed. The fact that petitioner has not demonstrated an injury lasting more than 6 months is moot.<sup>5</sup>

Accordingly, it is clear from the record that petitioner has failed to demonstrate that he received a vaccine set forth in the Vaccine Injury Table. **Thus, this case is dismissed for failure to state a claim upon which relief may be granted. The Clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

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**Denise K. Vowell**  
Special Master

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§ 4131(a); Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13632(a)(3), 107 Stat. 312 (1993)).

<sup>4</sup> The Rules of the U.S. Court of Federal Claims, as amended through July 2, 2012, are available at: <http://www.uscfc.uscourts.gov/rules-and-forms>.

<sup>5</sup> The Supreme Court has defined as “moot” those issues that “are no longer ‘live’” or for which “the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496 (1969). Because this Court does not have jurisdiction over vaccines not listed on the Vaccine Injury Table, the issue of the 6-month injury requirement has never been “live” in this case.