

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

No. 10-749V

Filed: February 23, 2012

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TRACIE BROWN,

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Petitioner,

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**Special Master Zane**

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v.

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Ruling on the record; trivalent (flu) vaccination; rheumatologic injuries.

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner;  
Glenn A. MacLeod, United States Dep't of Justice, Washington, D.C., for Respondent.

**UNPUBLISHED DECISION DISMISSING CASE\***

On November 1, 2010, Petitioner, Tracie Brown, filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Act”), alleging that she suffered “rheumatologic injuries” as a result of her receipt of the trivalent (flu) vaccination administered to her on November 13, 2007. Petition (“Pet.”) at 1; Amended Pet. at 1. For the reasons set forth below, the undersigned finds that Petitioner is not entitled to compensation and dismisses her case.

On February 18, 2011, Respondent filed a report pursuant to Vaccine Rule 4(c), stating that “[n]o treating physician has ascribed Petitioner’s medical condition as being caused by the influenza vaccine, nor does petitioner offer a medical theory in support of her claim that her medical condition is vaccine related.” Resp. Rule 4 Report at 10. In addition, Respondent noted

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\*Because this 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). 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, a party 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. 42 U.S.C. § 300aa–12(d)(4); Vaccine Rule 18(b).

that the onset of Petitioner's condition was "poorly defined" in the medical records. Thus, Respondent could not comment on whether there was an appropriate temporal relationship between the vaccine and the onset of Petitioner's condition. Respondent also noted that Petitioner had a known cervical spine disease and a strong family history of rheumatoid arthritis which increased the risk that Petitioner would also develop the condition. Thus, Respondent stated that compensation was not appropriate in this case.

On April 19, 2011, Petitioner filed a more substantive amended petition. Petitioner still alleged that the November 13, 2007 influenza vaccine she received caused her to develop rheumatologic injuries. However, Petitioner did not identify any particular entries in the medical records that disputed Respondent's statement that no treating physician had ascribed Petitioner's medical condition as being caused by the flu vaccination. Rather, Petitioner's only reference to the medical records was to a statement by a doctor who examined Petitioner two years after the vaccination. There, the physician merely noted that "[s]ince the patient has had an adverse reaction following the flu shot a few years ago, I left it up to her to whether she wants to go ahead with vaccination this year." Amended Pet., ¶ 17.

Subsequently, in May 2011, Petitioner was directed to file an expert report. Petitioner never filed such a report. Instead, months later, in November 2011, Petitioner filed her Motion for a Decision Dismissing the Petition stating that "[a]t this time, the petitioner has decided not to proceed with claim in the Vaccine Program." Petr's Motion for Decision, ¶ 2. Petitioner has requested that the undersigned issue a decision dismissing her case, acknowledging that a judgment would be entered against her. *Id.*, ¶ 3. Respondent did not file a response.

Having considered Petitioner's motion, the undersigned hereby grants Petitioner's motion for a ruling on the record and enters this ruling based upon the entire record. Vaccine Rule 8(d).

To be awarded compensation under the Act, a 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 the vaccinations in question, or 2) that any of her medical problems were actually caused by the vaccine(s) at issue. *See* 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). A petitioner may not be awarded compensation based on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1).

An examination of the record demonstrates that it does not contain medical records or a medical opinion sufficient to demonstrate that petitioner was injured by the subject flu vaccine. First, Petitioner does not allege and the record does not include evidence that Petitioner suffered a "Table Injury." Second, the medical records do not indicate that any of Petitioner's treating physicians opined that her alleged injuries were caused or significantly aggravated by her vaccination. *See generally* Petitioner's Exhibits 1-12. While one of Petitioner's treating physicians did make the aforementioned comment that Petitioner had an adverse reaction to a flu vaccine in 2007, that statement was made two years after the administration of the vaccination and appears to be a statement of medical history provided to the physician and not an independent opinion. Finally, despite having ample opportunity to do so, Petitioner has not submitted an opinion of a medical expert and, by her filing of the motion for decision, has indicated that she will not be submitting a report.

As explained above, based on the record as a whole, Petitioner has failed to prove by a preponderance of evidence that she suffered a “Table Injury” or that her conditions were “actually caused” by a vaccination. For these reasons and in accordance with 42 U.S.C. § 12(d)(3)(A), **Petitioner’s claim for compensation is denied, and this case is dismissed for insufficient proof.** In the absence of a motion for review, the Clerk of the Court is directed to enter judgment accordingly.

**IT IS SO ORDERED.**

/s/ Daria J. Zane  
Daria J. Zane  
Special Master