

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-262V

Filed: August 9, 2012

CRISSEY MEEKS,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*

NOT TO BE PUBLISHED

Human papillomavirus (HPV)
vaccine; connective tissue disorder;
dismissal for insufficient proof and
failure to prosecute; show cause order

Crissey Meeks, Zebulon, N.C., pro se

Darryl R. Wishard, United States Dep't of Justice, Washington, D.C., for Respondent

UNPUBLISHED DECISION DISMISSING CASE¹

Zane, Special Master.

This matter is before the undersigned due to the failure of Petitioner, Crissey Meeks (“Ms. Meeks”), *pro se*, to respond to a show cause order issued on June 22, 2012. The show cause order was the latest in a series of orders directing Ms. Meeks to participate in the prosecution of her action. Ms. Meeks failed to respond to this show cause order and to several prior orders. Ms. Meeks has failed to participate in status conferences and respond to communications from undersigned’s staff regarding her action despite being ordered to do so. Ms. Meeks has failed to

¹Because 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).

cooperate and communicate with her former counsel during the period in which he represented her, although her counsel made extensive, repeated efforts to contact and confer with her. Ms. Meeks has failed to prosecute her claim. As a result as explained more fully herein, her claim is dismissed.

BACKGROUND

On April 28, 2010, Ms. Meeks, through her former counsel,² filed a petition for compensation under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10, *et seq.* (“the Vaccine Act”), alleging that as a result of receiving the human papillomavirus (“HPV”) vaccine on May 11, 2007, July 19, 2007, and January 18, 2008, she suffered from a connective tissue disorder and other related symptoms. Petition at 2-4 [ECF No. 1]. The petition was filed with five exhibits.

During an initial status conference held on June 15, 2010, Respondent advised that certain test results in the medical records provided evidence that suggested that Ms. Meeks’s injury more likely stemmed from a cause other than the vaccine. *See* Respondent’s Rule 4 Report at 2 [ECF No. 34]. The then assigned Special Master suspended the deadline for Respondent to file a Rule 4 report and ordered Ms. Meeks to investigate the issue, provide pertinent medical records, and to file a statement in 30 days regarding this issue.³ June 15, 2010 Order [ECF No. 8].

Between July 2010, and April 2011, Ms. Meeks requested and was granted several extensions of time to investigate this issue and provide her statement. On May 4, 2011, Petitioner’s counsel filed a motion for leave to withdraw as counsel. Petitioner’s counsel’s Motion to Withdraw [ECF No. 22]. In that motion, counsel stated “[p]etitioner has informed Petitioner’s counsel that she will not undergo any additional testing Petitioner’s expert has determined that further medical testing would be a prerequisite to proceed any further in this case.” *Id.* at 2.

A status conference was held on May 18, 2011, to discuss how to proceed with the motion to withdraw. At the status conference, Petitioner’s counsel stated that Ms. Meeks opposed his withdrawal as her counsel. To address this issue, another status conference was scheduled for June 29, 2011, and the undersigned ordered that Ms. Meeks personally participate in that conference.

At the status conference on June 29, 2011, Ms. Meeks, as well as her counsel and counsel for Respondent, participated. The conference addressed Petitioner’s counsel’s motion to withdraw. At the conference, it was explained that the reason for the motion was that counsel had concluded that absent Ms. Meeks having additional medical tests, to which they understood she was not amenable, they felt they could not represent her further so that withdrawal was

² Ms. Meeks was represented by the firm Anapol, Schwartz, et al., from commencement of the action until their withdrawal in June 2012.

³ This matter was reassigned to undersigned in March 2011.

appropriate. At the conference, Ms. Meeks acknowledged her understanding that her counsel was moving to withdraw from representing her and the reasons for that motion. To resolve the matter, Ms. Meeks advised that she would agree to follow her counsel's direction and undergo additional testing.⁴ As a result, with the agreement of the parties, the undersigned temporarily denied Petitioner's counsel's motion to withdraw without prejudice subject to renewal if necessary in the future. June 30, 2011 Order [ECF No. 26].

In a status report filed September 14, 2011, Petitioner's counsel stated that they had made countless attempts to contact Ms. Meeks regarding the status of obtaining the results of any additional tests, but that Ms. Meeks had not responded to counsel's telephone calls or correspondence, which had been sent via Federal Express. September 14, 2011 Status Report [ECF No. 28-1]. Petitioner's counsel requested an additional twenty days to confirm that Ms. Meeks had undergone additional testing. In a status report filed October 6, 2011, Petitioner's counsel advised that Ms. Meeks had undergone additional laboratory testing. Based on the results of that additional testing, Petitioner's counsel renewed the motion to withdraw. *See* October 6, 2011 Status Report [ECF No. 30].

On December 5, 2011, the undersigned ordered the parties to contact chambers to schedule a status conference. The order specifically provided that Ms. Meeks was to participate in the scheduled conference. As such, it directed Petitioner's counsel to provide Ms. Meeks with a copy of the order and to report on her availability.

That status conference was scheduled for January 11, 2012. December 7, 2011 Order. Prior to that conference, on January 9, 2012, Petitioner's counsel filed a motion for an award of interim attorney's fees and costs. Motion for Interim Attorney's Fees and Costs [ECF No. 32].

At the outset of the January 11, 2012 status conference, attempts were made to reach Ms. Meeks to include her in the conference by calling the telephone number she provided her counsel as her most recent contact number. Although the voicemail message at the number suggested it was her correct number, Ms. Meeks did not answer the telephone. Petitioner's counsel confirmed that notice of the status conference as well as copies of the undersigned's order had been sent to Ms. Meeks via Federal Express and via e-mail and that the Federal Express package and the e-mail had been received by Ms. Meeks. Thus, despite her having notice of the conference and the undersigned's direction that she participate, Ms. Meeks failed to comply with the undersigned's order and did not participate in the status conference. *See* Exhibits A and B to Petitioner's Response to Motion to Dismiss [ECF No. 35].

⁴ Petitioner's counsel's Response to the Motion to Dismiss [ECF No. 35], alludes to Ms. Meeks being ordered to have further testing. The statement is somewhat ambiguous because in the next paragraph, it is represented that Ms. Meeks agreed to have further testing. Significantly, the electronic recording of the June 2011 status conference makes clear that during that conference, Ms. Meeks was repeatedly advised that the undersigned was not and would not order her to undergo additional tests. Instead, Ms. Meeks was advised that the decision whether to have additional tests was hers to make. *See* Minute Entry for June 29, 2011 Proceedings.

Following the January 2012 status conference, another status conference was scheduled for February 3, 2012. January 12, 2012 Order [ECF No. 33]. That order specifically required Ms. Meeks's personal participation and provided explicit instructions that Ms. Meeks was to contact the undersigned's chambers in advance of the February date if she could not participate in the telephonic status conference. The order also advised Ms. Meeks that her failure to participate in the February 3, 2012, status conference could result in the issuance of an Order to Show Cause which may result in her case being dismissed. January 12, 2012 Order [ECF No. 33].

On January 18, 2012, Respondent moved to dismiss the case [ECF No. 34]. Petitioner's counsel, as her representative, sent Ms. Meeks, via Federal Express, a copy of the Court's order and notice of the status conference and the Respondent's Motion to Dismiss. *See* Exhibit C to Petitioner's Response to Motion to Dismiss [ECF No. 34, Exhibit C]. In this communication, Petitioner's counsel specifically advised Ms. Meeks that the undersigned had set another conference for February 3, 2012, at 10:00 a.m., and had ordered that Ms. Meeks participate. *Id.* Petitioner's counsel received confirmation that the documents sent to Ms. Meeks via Federal Express were delivered. *See* Exhibit D to Petitioner's Response to Motion to Dismiss [ECF No. 34, Exhibit D].

At the February 3, 2012 status conference, Petitioner's counsel confirmed that the Federal Express package was delivered to Ms. Meeks. But, once again, Ms. Meeks did not answer her phone and could not be located and, thus, did not participate.

Later on February 3, 2012 following the status conference, Petitioner's counsel filed a Response to Respondent's Motion to Dismiss [ECF No. 35]. In the response, Petitioner's counsel outlined the extensive efforts made to communicate with Ms. Meeks regarding this case, and in particular, Respondent's Motion to Dismiss. *Id.* Petitioner's counsel noted that these attempts had not been successful due to Ms. Meeks's failure to respond to counsel's many messages and deliveries. Counsel explained that he was "unable to adequately respond to the merits of Respondent's Motion to Dismiss without meaningful contact with Petitioner." Petitioner's Response to Motion to Dismiss at 3 [ECF No. 35]. Petitioner's counsel requested that the undersigned issue a show cause order to Ms. Meeks. *Id.* at 3.

On February 3, 2012, the undersigned issued an Order to Show Cause directing Ms. Meeks to respond personally, not through counsel, to the Order no later than Friday, February 24, 2012, and to explain why this action should not be dismissed for failure to prosecute. February 3, 2012, Order [ECF No. 36-37]. The Order to Show Cause and the Scheduling Order from the February 3, 2012 status conference were sent to Ms. Meeks's last known address via certified mail. After several attempts to deliver the documents, the Orders were returned to the Court as undeliverable. The returned documents did indicate a forwarding address, which was a P.O. Box address.

On April 20, 2012, the undersigned held another status conference with counsel for the parties to discuss the next steps for proceeding. Petitioner's counsel advised that Ms. Meeks had contacted him via e-mail. Petitioner's counsel confirmed that the P.O. Box address listed as the

forwarding address was the address Petitioner had provided counsel recently and that she had represented it to be her current address. It was concluded, with the parties' counsels' acquiescence, that issuing another Order to Show Cause, which would be served on Ms. Meeks at the various addresses indicated to be hers, and which provided time for Ms. Meeks to respond, was the most appropriate course of action. Petitioner's counsel again indicated a desire to withdraw from the case.

On April 23, 2012, following the April 20, 2012 status conference, a Scheduling Order and an Order to Show Cause were issued [ECF Nos. 40-41]. These orders directed Ms. Meeks to respond personally, not through counsel, to the order to show cause on or before May 23, 2012 [ECF No. 39]. The scheduling order set a status conference for June 6, 2012, and ordered Ms. Meeks to participate in the conference. The undersigned directed that the clerk send copies of the orders to Ms. Meeks via two separate methods and to three addresses. April 23, 2012 [ECF No. 40]. Per the undersigned's direction, those orders were sent to three (3) different addresses for Ms. Meeks as follows: (1) to an address that was listed for Ms. Meeks on public records, (2) to the P.O. Box address Ms. Meeks had provided recently to her counsel and which had been listed as the forwarding address when the February order was returned as undeliverable, and (3) to the address that Ms. Meeks had provided to her counsel previously. The orders were sent to each address via two different methods, *i.e.*, (1) certified mail, return receipt requested, and (2) first class mail with delivery confirmation. *See* April 23, 2012 Docket Entry. The orders sent via certified mail, which required signature upon receipt, were returned unclaimed. *See* Non-PDF entries, May 14, 2012; May 18, 2012. As to the orders sent via first class mail with delivery confirmation (but not return receipt requested), there was indication that these items were not received by Ms. Meeks.

At the June 6, 2012, status conference, Petitioner's counsel advised that he had received notice that the copy of the order sent via e-mail to Ms. Meeks with a read-receipt requested, had been received and read by Ms. Meeks. Although counsel had attempted to contact Ms. Meeks, he had been unable to reach her and, thus, had not been able to discuss with her the conference or the Respondent's outstanding Motion to Dismiss.

As with the prior conferences, despite Ms. Meeks having notice of the conference and the undersigned's direction to participate, she could not be located for the June 6, 2012 status conference. Ms. Meeks did not answer the phone, return calls from the undersigned's chambers, or contact the undersigned's chambers either in advance requesting that the matter be rescheduled or afterwards in response to the messages left for her.

At the status conference, Petitioner's counsel explained that, as a result of Ms. Meeks's failure to communicate with him, he was unable to represent her effectively. Petitioner's counsel renewed his Motion to Withdraw. Shortly after the status conference, Petitioner's counsel submitted a motion for interim fees and a declaration [ECF Nos. 43 and 44]. In that declaration, Petitioner's counsel explained the extensive efforts made to communicate with Ms. Meeks and that she had failed to contact them. Thus, Petitioner's counsel was unable to prosecute her case. *See* June 13, 2012 Declaration [ECF No. 44-1]. Respondent's counsel did not oppose the renewed motion to withdraw.

After the June 2012 status conference, the undersigned granted Petitioner's counsel's Motion to Withdraw. June 21, 2012 Order [ECF No. 45]. In that order, the undersigned directed that Ms. Meeks, now *pro se*, contact undersigned's chambers on or before July 17, 2012, to provide a current address and phone number. *Id.* In addition, a renewed Order to Show Cause was issued on June 22, 2012 [ECF No. 46]. Ms. Meeks was ordered to respond in writing by July 20, 2012, and explain why her case should not be dismissed for her failure to prosecute.

The clerk's office was directed to, and did, send the two orders to the three different addresses to which the previous orders had been sent. The orders were sent via the same two methods the previous orders had been sent, *i.e.*, (1) certified mail, return receipt requested, and (2) first-class mail with delivery confirmation. In addition, the orders were also sent to the e-mail address for Ms. Meeks. June 22, 2012 Docket Entry.

As to the e-mail, a Relay Report indicated that the e-mail had been successfully delivered to Ms. Meeks's e-mail address. Court Exhibit 1 hereto. More important, Ms. Meeks had signed for one of the sets of orders sent certified mail return receipt requested as evidenced by her signature on the U.S. Postal Service return receipt. Court Exhibit 2 hereto. Finally, the U.S. Postal Service tracking information also indicated that the orders sent with delivery confirmation to Ms. Meeks to one of the addresses were delivered. Court Exhibit 3 hereto. Ms. Meeks clearly received copies of the June 21, 2012 Order directing her to contact chambers, as well as the June 22, 2012 Show Cause Order directing her to submit a written document explaining why her case should not be dismissed. She has failed to comply with these orders. She has not contacted chambers and supplied current contact information. More important, she has not responded to the Show Cause Order.

DISCUSSION

A petitioner must prosecute her case and comply with court orders, to include responding to orders. When a petitioner fails to prosecute her case or comply with court orders, the court may dismiss the case. *See* Vaccine Rule 21(b); *Tsekouras v. Sec'y of Health & Human Servs.*, 26 Cl. Ct. 439 (1992), *aff'd per curiam*, 991 F.2d 810 (Fed. Cir. 1993) (Table) (sustaining claim dismissal where petitioner was given two warnings and thereafter an additional opportunity to explain her noncompliance); *Sapharas v. Sec'y of Health & Human Servs.*, 35 Fed. Cl. 503 (1996); *see generally* RCFC 41(b) (A plaintiff's failure to comply with filing obligations arising under the court's rules or its failure to respond to the court's orders may result in the dismissal of its case for failure to prosecute); *Claude E. Atkins Enters., Inc. v. United States*, 899 F.2d 1180 (Fed. Cir. 1990) (affirming dismissal for failure to prosecute based on counsel's failure to comply with Court's orders); *Kadin Corp. v. United States*, 782 F.2d 175, 176-177 (Fed. Cir. 1986) (affirming dismissal where party repeatedly ignored court-imposed deadlines and rules).

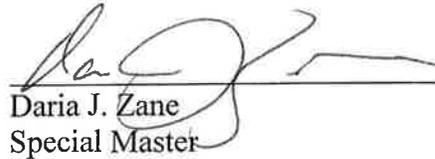
Although Ms. Meeks received the undersigned's June 21, 2012 order directing her to provide the undersigned with current contact information, and the June 22, 2012 show cause order directing her to respond to the Order to Show Cause, she has ignored those orders. This is the

latest in a long series of instances wherein Ms. Meeks had notice of the undersigned's orders and disregarded them. By disregarding the undersigned's orders, Ms. Meeks has failed to prosecute her claim. Her failure to prosecute warrants dismissal of the action.⁵

CONCLUSION

Accordingly, this action is hereby DISMISSED for failure to prosecute. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.


Daria J. Zane
Special Master

⁵ Moreover, a summary review of the record in its current state also indicates that dismissal for insufficient proof is appropriate. 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. *See* 42 U.S.C. § 300aa-13(a)(1)(A) and § 300aa-11 (c)(1). The undersigned cannot find that a vaccine-related injury occurred based solely upon the claims of the petitioner alone. 42 U.S.C. §300aa-13(a)(1). Rather, a petition must be substantiated by the medical records or by credible expert medical opinion. *Id.* In this case, the evidence is insufficient to establish that Ms. Meeks is entitled to compensation. First, there are no Table Injuries associated with the HPV vaccination. Second, the medical records do not support Ms. Meeks’s claim that her injury was caused by her receipt of the HPV vaccines. None of Ms. Meeks’s treating physicians attributed her conditions to the HPV vaccines, and Ms. Meeks has not offered an expert medical opinion. Review of the record indicates that were the undersigned to consider the merits of the claim at this stage, undersigned would be compelled to conclude that Ms. Meeks failed to prove by a preponderance of evidence that she suffered a “Table Injury” or that her conditions were “actually caused” by a vaccination. Thus, in accordance with 42 U.S.C. § 12(d)(3)(A), an apparent alternative basis for dismissing the case, is insufficient proof.

COURT EXHIBIT 1

Relay Report

Your message: *Confidential: Meeks v. Sec'y of Health & Human Servs. 10-262v
addressed to: <crissey.meeks@yahoo.com>
has the following delivery status: Your message was successfully relayed by aomail01d.uscmail.dcn at 06/22/2012 01:31:29 PM to the remote mail system smtp1-i.asbn.gtwy.DCN. Outbound support for confirmations is not configured.

What should you do?

This message is an informational Delivery Status Notification and does not require any further action.

- Your message was routed to a server which does not accept responsibility for generating Delivery Status Notifications upon successful delivery. You may assume that the message was successfully delivered if no failure message is received. Do not expect a delivery confirmation notice.

Routing path

AOMAIL01d/M/AO/USCOURTS, AOMAIL01d/M/AO/USCOURTS

To: crissey.meeks@yahoo.com

cc: darryl.wishard@usdoj.gov

Date: 06/22/2012 01:31:23 PM

Subject: *Confidential: Meeks v. Sec'y of Health & Human Servs. 10-262v

COURT EXHIBIT 2

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>Crissey Meeks</i></p>
<p>1. Article Addressed to:</p> <p><i>Crissey Meeks PO Box 122 Zebulon, NC 27597</i></p>	<p>B. Received by (Printed Name) <i>Crissey Meeks</i></p> <p>C. Date of Delivery <i>7/2/12</i></p>
<p>2. Article Number (Transfer from service label)</p> <p><i>7011 0470 0002 5084 7042</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

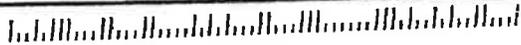
Office of the Clerk
U.S. Court of Federal Claims
717 Madison Place, N.W.
Washington, DC 20005

RECEIVED

JUL 5 2012

OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

10-262



COURT EXHIBIT 3



Search USPS.com or Track Packages

Quick Tools

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

Track & Confirm

GET EMAIL UPDATES

PRINT DETAILS

YOUR LABEL NUMBER

03103490000179024436

SERVICE

STATUS OF YOUR ITEM

DATE & TIME

LOCATION

FEATURES

Delivered

June 25, 2012, 9:49 am

ZEBULON, NC 27597

Delivery Confirmation™

Arrival at Post Office

June 25, 2012, 8:40 am

ZEBULON, NC 27597

Depart USPS Sort Facility

June 24, 2012

RALEIGH, NC 27676

Processed through USPS Sort Facility

June 24, 2012, 12:08 am

RALEIGH, NC 27676

Depart USPS Sort Facility

June 23, 2012

CAPITOL HEIGHTS, MD 20790

Processed through USPS Sort Facility

June 22, 2012, 9:38 pm

CAPITOL HEIGHTS, MD 20790

Check on Another Item

What's your label (or receipt) number?



LEGAL

- [Privacy Policy](#)
- [Terms of Use](#)
- [FOIA](#)
- [No FEAR Act/EEO Data](#)

OTHER USPS SITES

- [Business Customer Gateway](#)
- [Postal Inspectors](#)
- [Inspector General](#)
- [Postal Explorer](#)

ON USPS.COM

- [Government Services](#)
- [Buy Stamps & Shop](#)
- [Print a Label with Postage](#)
- [Customer Service](#)
- [Site Index](#)

ON ABOUT.USPS.COM

- [About USPS Home](#)
- [Newsroom](#)
- [Mail Service Updates](#)
- [Forms & Publications](#)
- [Careers](#)