In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-250V
Filed: June 22, 2016
Reissued Redacted: June 29, 2016
Not to be Published

A.B.,	*	
	*	
Petitioner,	*	Petitioner's motion to dismiss
	*	granted; tetanus toxoid ("Td")
v.	*	vaccine; chronic pain syndrome,
	*	generalized anxiety disorder,
SECRETARY OF HEALTH	*	conversion disorder, chronic
AND HUMAN SERVICES,	*	fatigue disorder; arm injury;
	*	statute of limitations.
Respondent.	*	
	*	

William E. Cochran, Jr., Memphis, TN, for petitioner.
Camille M. Collett, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION[1]

On March 11, 2015, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34 (2006), alleging that the tetanus toxoid ("Td") vaccine she received in her left arm on January 23, 2012, caused her chronic pain syndrome, generalized anxiety disorder, and conversion disorder. Pet. ¶ 3.

Medical records show that petitioner claimed onset of her alleged injuries on the date of

[1] Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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. When such a decision is filed, petitioners have 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. On June 28, 2016, petitioner moved informally to redact her name from this decision. The undersigned granted petitioner's informal motion.

the vaccination, more than 36 months before she filed her petition. The Vaccine Act, 42 U.S.C. § 300aa-16(a)(2), states "no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset." Petitioner's first symptom occurred January 23, 2012. She should have filed her petition no later than January 23, 2015 to be timely. Instead, she filed her petition on March 11, 2015, one and one-half months after the expiration of the statute of limitations.

In telephonic status conferences on June 15, 2015 and October 19, 2015, petitioner's counsel admitted that the statute of limitations barred the arm injury, but argued that petitioner had as sequelae of her arm injury chronic pain syndrome, generalized anxiety disorder, and conversion disorder. In other words, petitioner wanted to be compensated for the sequelae of her vaccine injury even though the vaccine injury was time-barred. The undersigned ordered petitioner to file a brief on this theory.

Instead, on February 9, 2016, petitioner filed a Status Report stating that she was no longer pursuing the theory that her chronic pain syndrome or conversion disorder were sequelae of her shoulder injury. Status Rep. at 1. Instead, she intended to pursue an alternate theory that her chronic fatigue syndrome began with the onset of her fatigue which began after her arm injury. Id. at 1-2. Petitioner requested 60 days to find an expert to support her theory that the vaccination caused her chronic fatigue syndrome by a different mechanism separate from her shoulder injury. Id. On February 10, 2016, the undersigned issued an Order granting petitioner's informal motion for 60 days to find an expert and gave petitioner until April 11, 2016 to do so.

On April 11, 2016, petitioner filed a motion for enlargement of time to ask for another 60 days to find an expert to support her theory. Petitioner never found an expert.

On June 22, 2016, almost five months after petitioner began her search for an expert in support of her allegations, the undersigned held a telephonic status conference and asked petitioner's counsel if petitioner were dismissing. He said yes, and made an oral motion to dismiss. The undersigned **GRANTS** petitioner's motion to dismiss.

FACTS

Pre-vaccination records

Petitioner was born on November 2, 1965.

On December 22, 2010, petitioner went to NextCare Urgent Care as a new patient and saw PAC Lauren Wright. Med. recs. Ex. 4, at 1. Petitioner complained of one week of a moderately severe rash on her back, abdomen, and bilateral extremities, which was worsening. Id. She described the rash as itchy, red, and irritating. Id. She had recent insect bites and was keeping chickens. Id. She also complained of myalgias and malaise. Id. Her history included chills, fatigue, trouble sleeping, rash, itching, insect bites, insect stings, cuts, bumps, scrapes,

bruises, skin color change, and abdominal pain. Id. She also reported a history of anxiety, depression, fainting/dizzy spells, glaucoma, tension, and sleep disorders. Id. at 2. On physical examination, petitioner did not have visible impressive skin lesions. Id. at 3. She did have scattered papules on the back of her forearms and her forehead. Id. She had redness and flaking on the left side of her abdomen, which she said was the site of a tick bite that occurred four months before. Id. After the tick bite, petitioner said the area was red, but the redness went away on its own. Id. Petitioner was diagnosed with urticaria (hives). Id. at 4. It was noted that petitioner worked in a garden and had a history of many tick bites in May 2010. Id. at 5.

On October 21, 2011, petitioner went to Franklin Community Health Services, complaining of respiratory problems starting about three years previously (2008) after her home flooded and developed mold. Med. recs. Ex. 3, at 8. She had a cough for about three years. Id. For the prior two weeks, her cough had been occurring day and night, but was worse at night. Id. She noted she got depressed intermittently. Id. She felt as if she were gasping for breath. Id.

On December 5, 2011, petitioner returned to Franklin Community Health Services, saying she still was coughing and choking secondary to mold. Id. at 7. She had syncopal (fainting) episodes after eating peppers in food. Id. She passed out from stomach cramps. Id.

Post-vaccination records

On January 23, 2012, petitioner received Td vaccine in her left arm. Med. recs. Ex. 3, at 4.

On November 16, 2012, petitioner saw PA Allison Moore at A Plus Urgent Care, complaining of pain in her left deltoid which she said began in January 2012 after a tetanus injection. Med. recs. Ex. 1, at 10. She stated that since the injection, she had had intermittent burning pain that radiated down her arm. Id. She also reported soreness under her left scapula (shoulder blade) that massage relieved, and a very itchy rash on her abdomen, back, arms, and legs. Id. She reported feeling more tired for the prior three months. Id. at 11. On physical examination, petitioner said she had back pain, myalgias, joint pain, and swelling. Id. On physical examination, she had normal range of motion with slight pain to palpation of the left scapula, but no muscle atrophy, erythema, or edema. Id. Her skin had diffuse erythematous wheals (some of which had excoriations) on her abdomen, back, arms, legs, and feet. Id. PA Moore diagnosed petitioner with unspecified urticaria (hives), back muscle strain, and possibly hypothyroidism. Id. at 12. She prescribed Prednisone for seven days. Id.

On April 1, 2013, petitioner saw Dr. Doris J. Batts-Murray at Franklin Community Health. Med. recs. Ex. 3, at 13. Petitioner complained of leg and arm pain and numbness in her left arm since her tetanus injection. Id. Petitioner said this started on January 23, 2012, when she received the tetanus shot. Id. at 14. It started in the left deltoid around the injection area and now involved the left side of her head and went down her entire left side. Id. Most of the time, petitioner said her whole body felt slightly numb and tingly. Id. She said she had not felt normal at all since the injection. Id. She described the sensation as a fresh, burning pain associated with

muscle or nerve tension-type pressure build-up. Id. She said she had a knotted type of sensation from the middle of her left shoulder and scapular area to the middle spinal area of her back. Id. Petitioner said the pain often spread over her entire body. Id. She had the sensation of piercing pain in both legs that lasted a few seconds but kept returning and would not stop until she sat down. Id. Her itchy type of rash started a few months after the injection. Id. On physical examination, petitioner had an eczematoid-type rash on her legs and ankles. Id. at 15. Another type of rash on her torso had healed, leaving hyperpigmented spots. Id. Her left upper extremity had normal range of movement and strength without tenderness or joint enlargement. Id. at 16. Her left lower extremity had normal range of motion and strength without tenderness or joint enlargement. Id. Her deep tendon reflexes were 2+ and symmetric. Id. Her muscle tone was normal. Id. Dr. Batts-Murray diagnosed petitioner with eczema and prescribed triamcinolone acetonide cream to be applied twice a day. Id.

On October 11, 2013, petitioner returned to A Plus Urgent Care and saw PA Richard Browne. Med. recs. Ex. 1, at 1. Petitioner said she continued to have left deltoid pain and left upper arm pain from a tetanus injection that "hit the bone" in January 2012. Id. The rash on her abdomen got a little better on Prednisone but then returned. Id. at 1–2. On physical examination, petitioner had a normal range of motion. Id. at 2. Her left deltoid did not look abnormal. Id. Her muscle strength was normal. Id.

On March 10, 2014, petitioner saw Dr. Shepherd Rosenblum at Triangle Orthopaedic Associates, complaining of a bilateral upper arm problem. Med. recs. Ex. 12, at 6. Petitioner told Dr. Rosenblum that she had a feeling of constant numbness, burning, and pain in both shoulders and both legs for quite some time. Id. She also had knots in her stomach and pains in the shoulder region. Id. She said the burning had become more constant, particularly in the left subdeltoid after she had a tetanus shot there. Id. She said that, after the vaccination, it was red and painful for four months. Id. It gradually improved, but then she developed flu-like symptoms and burning, sharp pain in the periscapular region. Id. She had occasional spasms on her left side. Id. She occasionally had numbness and tingling in her hands. Id. She said she had a good range of motion of her neck. Id. She said she went to Urgent Care and was put on medication, but it caused a rash all over. Id. She was then on a low dose of Prednisone, but complained that all four extremities had constant numbness and burning. Id. She said her problems resulted in elevated blood pressure. Id. On examination, petitioner was 5'1" and weighed 130 pounds. Id. at 7. She had full range of motion of her arms with rotator cuff strength of 5/5. Id. She had almost generalized complaints of decreased sensation in both arms and legs. Id. Dr. Rosenblum's impression was that petitioner did not have a shoulder problem. Id. at 8. He thought she had more of a fibromyalgia issue. Id. He prescribed a Medrol Dosepak. Id.

On March 14, 2014, petitioner saw PAC Sharon Johnson at Rolesville Family Practice. Med. recs. Ex. 11, at 13. Petitioner was concerned with elevated blood pressure and anxiety. Id. She had a history of post-partum depression, untreated anxiety, and untreated elevated blood pressure. Id. at 14. She complained of chronic left shoulder and nerve pain, which began after having a tetanus shot that "hit the bone" three years previously at her former PCP's office. Id.

She said the needle was injected into her lateral/posterior shoulder joint, and she actually felt it puncture her shoulder bone. Id. She had flu symptoms immediately after the injection for several days. Id. There was acute sharp, burning pain in the area with knots around the region. Id. Petitioner also broke out in a rash after the injection. Id. The pain had improved a little, but persisted since then to some degree. Id. She had numbness that spread down her left arm. Id. Since then, she developed numbness and "shocking pains" all over her body that were intermittent. Id. She had the worst pain around the left shoulder girdle into the posterior neck, but the paresthesias had worsened, affecting the entire left side of her body more than the right side. Id. Petitioner's former PCP said these were not symptoms of an allergic reaction. Id. Petitioner complained of difficulty sleeping due to burning pain across her upper back into her left shoulder. Id. She said shocking pains could occur intermittently anywhere in her body. Id. She had spasms in her lower and upper back at times. Id. She had "flu pain" achiness all over her body. Id. She felt as if these were bruises. Id. Petitioner said her blood pressure started to rise shortly after her tetanus shot three years ago. Id. at 15. She admitted to feeling stressed from dealing with these symptoms and feeling anxious and nervous all the time. Id. She had a near panic attack the day before the visit due to increased pain in her upper back and neck. Id. She was sweating on her forehead, numb and tingling all over, felt lightheaded, and had chest pressure, lasting for 15 minutes. Id. She said she had a family member massage her upper back every day. Id. If she did not have the massage, a number of knots and spasms would build up in her upper back making her pain almost intolerable. Id. The massage helped to "de-stress" her body. Id. During the massage, she felt nerve pain "shooting" through her body. Id. She went to the local emergency room in November 2012 when she had what she felt was a heart attack, but was more likely a panic attack. Id. The ER personnel did a number of tests and, other than iron deficiency anemia, they did not find anything wrong with her. Id. On physical examination, petitioner had full, active range of movement of both arms and shoulders without pain. Id. She had some palpable spasms of muscles in the upper trapezius on the left side. Id.

On April 4, 2014, petitioner saw Dr. Carl Smith at Triangle Orthopaedic Associates, complaining of muscle aches, pain all over her body, and "nerve damage." Med. recs. Ex. 12, at 3. Petitioner had a history of anemia, depression, fibromyalgia, high cholesterol, and hypertension. Id. Petitioner told Dr. Smith that during her tetanus vaccination on January 23, 2012, she felt a scraping of bone and the needle pushed against her bone. Id. at 4. She had "tremendous pain" from the injection for four and one-half months. Id. She also noted that two weeks after the tetanus vaccination, she had flu symptoms but no temperature. Id. Her leg ached and cramped, and her muscles felt as if they were "wasting" and weak. Id. She said she was weak, without energy, and anxious; her sleep was affected; she had a sore throat; and she felt swelling with associated headaches. Id. At first, her headache involved half her skull, but then migrated to her whole head. Id. These sensations occurred on the left side of her body and then rotated to the right side of her body. Id. In December 2012, she could not lift her arms because of intense pain and could drive only with her right hand. Id. Dr. Rosenblum thought she had fibromyalgia. Id. He "did not think this was all related to a shoulder issue." Id. Petitioner "is convinced all of her symptoms are related to" her tetanus vaccination. Id. She felt traumatized. Id. She paid her daughter to massage her daily from two to six hours before bedtime. Id. On physical examination, petitioner had normal movement of all extremities. Id. at 5. Her muscles

had normal bulk and tone. Id. Her sensation was grossly intact and her reflexes were bilaterally symmetric. Id. She did not have a skin rash, although there were old areas of healed rash marks on her abdomen, arms, and legs. Id. Dr. Smith diagnosed petitioner with fibromyositis. Id. Although petitioner did not have any significant tenderness in her body, her perspective was that her tetanus injection affected her. Id. She did not have all the tender points to justify a diagnosis of fibromyalgia. Id. Anxiety might be playing a role. Id. She did not have enough criteria to merit a diagnosis of posttraumatic stress disorder. Id. Dr. Smith suggested she see a rheumatologist. Id. He suggested Lyrica, but she preferred not to take medicine. Id. He suggested aquatic therapy as well as acupuncture, but she refused to do either. Id.

On April 11, 2014, petitioner returned to PAC Johnson at Rolesville Family Practice for a one-month follow-up appointment for insomnia, anxiety, and chronic pain. Med. recs. Ex. 11, at 9. Petitioner had herpes simplex, low potassium due to recent oral steroids, anxiety, benign hypertension, generalized pain, and other abnormal findings. Id. She felt as if someone were pushing on her shins because they felt heavy, tight, and bruised. Id. at 11. She also complained of swelling in her lower legs, although PAC Johnson stated they did not appear swollen. Id. Petitioner still complained of burning pain at the lateral deltoid where she had received her last Td injection. Id. On physical examination, petitioner had full range of movement of her left arm and shoulder. Id. Petitioner's daughter massaged petitioner's muscles six hours a day, three hours in the morning and three hours in the evening. Id. Petitioner requested an x-ray of her shoulder and neck. Id. Petitioner stated she felt shortness of breath with only mild exertion. Id. She said her legs felt like jelly when she walked and were weak. Id. She said her heart raced when she tried to garden. Id. Petitioner explained her herpes simplex virus and cold sores as the result of drinking from a friend's cup earlier that year. Id. The friend had cold sores. Id.

On April 25, 2014, petitioner saw Dr. Tony Ning at Triangle Orthopaedic Associates. Med. recs. Ex. 12, at 1. She complained of being sleepy and said she developed hypertension and dizziness when she walked in. Id. She said she received a traumatic shoulder injection in 2012, causing pain in her upper arm, which worsened and went down her neck and shoulders for four and one-half months. Id. The pain also caused knots and arthritis. Id. She said she developed muscle weakening and wasting plus fatigue. Id. She also developed numbness. Id. Petitioner said that in 2012, she lost sensation in her right hand and right leg. Id. at 2. She now had pain all over and was frustrated. Id. She said the pain was in her muscles, nerves, and body. Id. She also said that her numbness was worsening. Id. Petitioner said she had skin rashes over her upper arms, scarring, and intermittent weakness. Id. On physical examination, Dr. Ning did not see any skin rashes. Id. He diagnosed her with fibromyalgia. Id. She did not fit the criteria for an autoimmune disease. Id.

On May 7, 2014, petitioner saw Dr. Justin Scruggs, an orthopedist. Med. recs. Ex. 6, at 6. She complained of a history of head injury. Id. She was doing a friend's hair on May 5, 2014, and passed out, hitting her head. Id. This also happened in 2013 when she hit the other side of her head. Id. Petitioner had immediate nausea and headache, trouble with memory, excessive fatigue, and sluggishness. Id. She said she had an anxiety attack because of her trouble with memory. Id. Currently, she felt pain in her temple, right greater than left. Id. She

felt pressure in her head, mild dizziness, difficulty concentrating and remembering, fatigue, confusion, drowsiness, difficulty sleeping, irritability, nervousness, and anxiety. Id. She described numbness, which she said has been persistent since a tetanus shot a "while ago." Id. at 7. Dr. Scruggs wrote, "[I]t is unclear if she has any actual numbness anywhere in the body." Id. at 7–8. He diagnosed petitioner with persistent postconcussive symptoms and suggested she see a neurologist and a cardiologist. Id. at 8.

After her appointment with Dr. Scruggs on May 7, 2014, petitioner returned to PAC Johnson at Rolesville Family Practice, complaining of increased anxiety and depression. Med. recs. Ex. 11, at 6. Petitioner had stopped taking Lexapro and Pamelor because she did not think she needed the medication since her pain and sleep were better. Id. at 7. Prior to her appointment, when she was at Dr. Scruggs' office, she had increased anxiety and became overwhelmed at the checkout counter when asked for payment. Id. She started to have a panic attack with acute sweating, lightheadedness, and hyperventilation. Id. She passed out at Dr. Scruggs' office. Id. PAC Johnson explained to petitioner that the cause of her increased mood disorder leading to her panic attack and fainting that day was likely due to her stopping Pamelor and Lexapro abruptly. Id. at 8.

On June 16, 2014, petitioner returned to PAC Johnson at Rolesville Family Practice for a follow-up appointment to discuss her mood problems and MRI results. Id. at 1. An MRI of her cervical spine showed early osteoarthritis and early central canal and neural foraminal stenosis. Id. An MRI of her left shoulder showed tendinitis, bursitis, and shoulder impingement. Id. Blood testing revealed a false positive ANA (antinuclear antibody) result. Id. at 2. Petitioner was taking Lexapro in the morning, but not Pamelor. Id. at 3. She had not had any further severe panic attacks but stated she had occasional anxiety. Id. She often felt dizzy, nauseated, and lightheaded, starting from when she woke, which was almost constant all day. Id. When she stood and felt lightheaded, her vision started to darken. Id. Her body felt tired, restless, and sometimes like jelly. Id. Sometimes, her heart beat fast. Id. Petitioner stated that the numbness she had in 90% of her body was now down to 50% of her body. Id. She stated she had various chest pains, starting on the left side, moving to the right side, and then mid-chest. Id. She felt burning pain in most of her joints with aching in the muscles between her joints. Id. Petitioner said her 20-year-old daughter also had anxiety. Id. The daughter had become so anxious that she had not left their home in almost six years and had not been able to attend high school to finish it. Id. At times, her daughter would go into hysterical and yelling fits, threatening to kill herself if petitioner or her husband took the daughter outside. Id. The daughter would often lock herself in her room. Id. Petitioner thought some of her anxiety was related to having to deal with her daughter at home. Id. PAC Johnson thought petitioner had some characteristics of fibromyalgia, but she lacked the tenderness and pain in her lower extremity joints that was typical of fibromyalgia. Id. at 4. The inciting incident was the tetanus injection to her lateral left deltoid in the past. Id. PAC Johnson thought petitioner had a likely obsessive-compulsive disorder component to her general anxiety disorder and panic attacks "as she is obsessed and fixated on the Td that was injected into her L should[er] that led to nearly somewhat sudden onset of her chronic pain syndromes in the upper extrem[ities]." Id. Petitioner's daughter was suffering from a serious mental disorder that had not been fully diagnosed or properly treated,

which was contributing to petitioner's own uncontrolled anxiety. Id. Petitioner refused a referral to psychiatry and even made it seem that calling authorities to have her daughter committed to a hospital was too anxiety-inducing for her to handle. Id. She also refused a referral for counseling. Id. at 5. PAC Johnson thought that petitioner's dizziness and atypical chest pain were associated with her general anxiety disorder and panic attacks. Id. PAC Johnson explained to petitioner that spinal stenosis in her neck could contribute to upper back soreness, numbness, and dizziness. Id. PAC Johnson also explained to petitioner that the results of her recent left shoulder MRI that showed shoulder impingement "would be unlikely [to] be related to her Td vax [vaccination]." Id. Petitioner refused any prescriptions or other treatment options. Id. Petitioner also disagreed with PAC Johnson's plan to have her see a cardiologist or neurologist. Id.

On June 18, 2014, petitioner had tests performed, which showed that she had iron-deficiency anemia. Med. recs. Ex. 7, at 11. The comment on the information sheet states, "Anemia can certainly contribute to fatigue, restlessness, palpitations, [and] SOB [shortness of breath]." Id.

On June 30, 2014, petitioner returned to Dr. Scruggs, the orthopedist. Med. recs. Ex. 6, at 1. He reviewed petitioner's brain MRI with her. Id. It showed some downward displacement of the cerebellar tonsils but no Chiari malformation. Id. Petitioner said she still felt like jelly after waking up. Id. Petitioner had been diagnosed with fibromyalgia and had multiple complaints of pain throughout her body. Id. She also mentioned left shoulder pain, which she thought was due to a tetanus shot she received a couple of years earlier, after which she had an increase in left arm pain and pain throughout her body. Id. Petitioner showed Dr. Scruggs an MRI of her left shoulder showing tendinosis of the subscapularis and subacromial impingement (both rotator cuff problems). Id. She also had a cervical spinal MRI that showed early facet arthritis. Id. On physical examination, petitioner had normal inspection of the cervical spine and left shoulder with very mild tenderness to palpation of her deltoid. Id. at 2. Dr. Scruggs told petitioner that "it would be unlikely that a tetanus shot would cause chronic shoulder pain. MRI really did show tendinosis of the subscapularis and impingement." Id.

On July 30, 2014, petitioner saw Dr. William G. Ferrell, a neurologist. Med. recs. Ex. 7, at 1. Petitioner claimed her various symptoms began over two years previously after receiving a tetanus vaccination, along with experiencing multiple concussions. Id. She described two separate feelings of syncope. In the first, she would become unconscious for about five to 10 minutes. Id. She was able to anticipate the onset because she felt cold and sweaty as if her body were being shocked. Id. She also noted visual disturbances and tinnitus. Id. In the second type of episode, she described an imminent feeling of syncope with associated dizziness and blurry vision that seemed to occur daily with varying duration and intensity. Id. Petitioner said she had pressure and shooting pain generalized throughout the right side of her head and neck, coming from her neck. Id. She had a history of anemia. Id. at 2. On physical examination, petitioner had give-away weakness on both her left and right arms. Id. at 3. She did not have atrophy, fasciculations, abnormal movements, tremor, or bradykinesia. Id. at 4. She had no abnormalities in sensation, coordination, or reflexes. Id. Dr. Ferrell diagnosed petitioner with "conversion

reaction rather than any true objective loss of neurologic function." Id.

On August 26, 2014, Dr. Ferrell had petitioner undergo an EMG-Nerve Conduction Study. Id. at 31. Dr. Richard W. Tim wrote that the study results were normal without electrophysiologic evidence of a diffuse peripheral neuropathy, left or right radiculopathy from C5 through T1, left radiculopathy from L1 through S1, left carpal tunnel syndrome, or left ulnar mononeuropathy. Id.

DISCUSSION

In Cloer v. Sec'y of HHS, 654 F.3d 1322, 1325 (Fed. Cir. 2011) (en banc), the Federal Circuit stated that the Vaccine Act's statute of limitations "begins to run on the calendar date of the occurrence of the first medically recognized symptom or manifestation of onset of the injury claimed by the petitioner." See also Markovich v. Sec'y of HHS, 477 F.3d 1353, 1360 (Fed. Cir. 2007), holding that the "'first symptom or manifestation of onset'" of a vaccine injury, for purposes of 42 U.S.C. § 300aa-16(a)(2), "is the first event objectively recognizable as a sign of a vaccine injury by the medical profession at large."

In this case, the calendar date of the occurrence of the first medically recognized symptom or manifestation of onset of petitioner's vaccine injury is January 23, 2012, the date of her tetanus vaccination. Thirty-six months expired on January 23, 2015, yet petitioner did not file her petition until March 11, 2015. Her petition is time-barred.

Recognizing that petitioner's alleged arm injury was time-barred, petitioner switched her allegation to the arm injury causing fatigue whose sequelae was chronic pain syndrome and conversion disorder. Then she switched her theory once more to chronic fatigue syndrome being a sequelae of her arm injury. Whichever theory petitioner pursued in order to avoid the consequence of the statute of limitations having run concerning her arm injury, she never found a medical expert to support that theory.

To satisfy her 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. Secretary of Health and Human Services, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

> A persuasive medical theory is demonstrated by "proof of a logical sequence of cause of and effect showing that the vaccination was the reason for the injury [,]" the logical sequence being supported by a "reputable medical or scientific explanation[,]" i.e., "evidence in the form of scientific studies or expert medical testimony[.]"

418 F.3d at 1278.

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. Id. at 1148.

Petitioner must show not only that but for her Td vaccination, she would not have had chronic pain syndrome, conversion disorder, or chronic fatigue syndrome, but also that her Td vaccination was a substantial factor in causing her chronic pain syndrome, conversion disorder, or chronic fatigue syndrome. Shyface v. Sec'y of HHS 165 F.3d 1344, 1352 (Fed. Cir. 1999).

The Vaccine Act does not permit the undersigned to rule for petitioner based on her claims alone, "unsubstantiated by medical records or by medical opinion." 42 U.S.C. § 300aa-13(a)(1). In the instant action, petitioner, although given an ample opportunity to do so, did not file a medical expert report, and her medical records do not substantiate her allegations.

The undersigned **GRANTS** petitioner's motion to dismiss and **DISMISSES** this case for petitioner's failure to make a prima facie case under the Vaccine Act.

CONCLUSION

This 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.[2]

IT IS SO ORDERED.

Dated: June 29, 2016

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

[2] Pursuant to Vaccine Rule 11(b), entry of judgment can be expedited by each party, either jointly or separately, filing a notice renouncing the right to seek review.