

Vaccine Program. *Id.* at ¶ 2. Petitioner intends to protect her rights to file a civil action in the future. Therefore, pursuant to Section 21(a)(2), petitioner intends to elect to reject the Vaccine Program judgment and to file a civil action. *Id.* at 5.

To receive compensation in the Vaccine Program, petitioner must prove either: (1) that she suffered a “Table Injury,” i.e., an injury beginning within a specified period of time following receipt of a corresponding vaccine listed on the Vaccine Injury Table, or (2) that she suffered an injury that was caused-in-fact by a covered vaccine. §§ 13(a)(1)(A); 11(c)(1). An examination of the record does not support a finding that petitioner suffered a “Table injury.” While the Vaccine Injury Table does list flu vaccine and GBS within the approximate time period alleged here, it is not clear that petitioner did indeed experience GBS. Respondent disputes that diagnosis. *See* Rule 4(c) Report (ECF No. 22) at 11 – 14. I agree that petitioner needs to retain an expert to either support the diagnosis of GBS or establish that the flu vaccine was the cause-in-fact of her alternative diagnosis of viral myositis with rhabdomyolysis. *See* Scheduling Order entered on April 13, 2018 (ECF No. 25); Scheduling Order entered on October 17, 2018 (ECF No. 31). However, petitioner has not found an expert able to provide a supportive opinion.

Under the Vaccine Act, the Vaccine Program may not award compensation solely based on a petitioner’s own claims. Rather, a petitioner must support his claim with either medical records or the opinion of a competent physician. § 13(a)(1). In this case, the medical records do not establish either a “Table Injury” or an “off-Table” injury which was caused-in-fact by the vaccine. Furthermore, petitioner has not submitted an expert report in support of her claim. Petitioner has not met her burden of proof. Therefore, her claim cannot succeed and it must be dismissed. § 11(c)(1)(A).

Thus, petitioner’s motion is GRANTED. This matter is DISMISSED for insufficient proof. The Clerk of the Court shall enter judgment accordingly.

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master