

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1196

Filed: September 17, 2019

Unpublished

PATRICK L. MAGLIOZZI,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Dismissal; Anthrax Vaccine;
Vaccine Not Covered by Program;
Insufficient Proof; Vaccine Act Entitlement;
Denial Without Hearing; Special Processing
Unit ("SPU")

David Porter Murphy, Greenfield, IN, for petitioner.

Heather Pearlman, U.S. Department of Justice, Washington, DC, for respondent.

DECISION¹

Dorsey, Chief Special Master:

On August 13, 2018, Mr. Magliozzi ("petitioner") filed a petition and eight pages of medical records for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² [the "Vaccine Act" or "Program"]. The petition alleges that petitioner sustained various injuries as a result of his receipt of an anthrax vaccine on August 1, 2015.

On August 7, 2019, an Order to Show Cause was issued, informing petitioner that the Anthrax vaccine is not covered under the Program and that the petition appeared to be filed outside the statute of limitations period. ECF No. 14. The order

¹ The undersigned intends to post this ruling on the United States Court of Federal Claims' website. **This means the ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished ruling contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in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).

² 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).

afforded petitioner 30 days, until September 6, 2019, to amend the petition or otherwise show cause why the petition should not be dismissed. It also provided petitioner with information on how to voluntarily exit the Vaccine Program. The order concluded by informing petitioner that non-compliance would be interpreted as either a failure to prosecute the claim or as an inability to provide necessary support for the claim. The petition would be dismissed in either event.

On September 5, 2019, petitioner filed a Motion for a Decision Dismissing His Petition. ECF No. 15. Petitioner indicated in his motion that “[a]n investigation of the facts and science supporting his case has demonstrated to Petitioner that he will be unable to prove that he is entitled to compensation in the Vaccine Program.” *Id.* at 1. Petitioner further indicated that he “understands that a decision by the [undersigned] dismissing his petition will result in a judgment against him. He has been advised that such a judgment will end all of his rights in the Vaccine Program.” *Id.*

To be entitled to compensation under the Vaccine Act, a petitioner must demonstrate that he or she received a vaccine set forth in the Vaccine Injury Table [the “Table”]. See §11(c)(1)(A); 42 C.F.R. § 100.3 (2017). Anthrax vaccines do not appear in the Table and are therefore not covered by the Program. In addition, under the Vaccine Act, “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 or of the significant aggravation of such injury”. § 16(a)(2). Petitioner alleges that he received an anthrax vaccination on August 1, 2015, and experienced adverse effects 2-3 days thereafter, but did not file a petition for compensation until August 13, 2018, more than 36 months after the date of his first symptoms. Petition at 1.

As such, petitioner is unable to show that he “received a vaccine set forth in the Vaccine Injury Table” (§11(c)(1)(A)) or filed the petition within 36 months of his first symptoms (§16(a)(2)). Thus, petitioner cannot receive compensation on a claim based on the Anthrax vaccine through the Vaccine Program, and the petition must be dismissed. See, e.g., *Cielencki v. HHS*, No. 15-632V, 2015 WL 10767150, at *3 (Fed. Cl. Spec. Mstr. Dec. 22, 2015) (dismissing petition that involves Pneumovax, a non-covered vaccine).

For these reasons, and in accordance with § 12(d)(3)(A), **petitioner’s claim for compensation is denied and this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.