

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

VALERIE MURPHY,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 20-666V
Special Master Christian J.
Moran

Filed: May 4, 2022

Ruling finding fact; onset.

FINDING OF FACT¹

Valerie Murphy claims that an influenza (“flu”) vaccination she received on December 4, 2017, caused her to suffer from peripheral neuropathy in her legs. Pet., filed June 1, 2020, at 1. However, the parties dispute when she began to experience problems in her legs. A fact hearing was held on May 3, 2020, to determine the issue of onset. Preponderant evidence shows that Ms. Murphy began experiencing muscle twitching in her legs around December 10, 2017.

Standards for Adjudication

Petitioners are required to establish their cases by a preponderance of the evidence. 42 U.S.C. § 300aa-13(1)(a). The preponderance of the evidence standard requires a “trier of fact to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the judge of the fact’s existence.” Moberly v. Sec’y of

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this ruling on its website. Anyone will be able to access this ruling via the internet (<https://www.uscfc.uscourts.gov/aggregator/sources/7>). Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Health & Hum. Servs., 592 F.3d 1315, 1322 n.2 (Fed. Cir. 2010) (citations omitted).

The process for finding facts in the Vaccine Program begins with analyzing the medical records, which are required to be filed with the petition. 42 U.S.C. § 300aa-11(c)(2). Medical records that are created contemporaneously with the events they describe are presumed to be accurate. Cucuras v. Sec’y of Health & Hum. Servs., 993 F.2d 1525, 1528 (Fed. Cir. 1993).

The Vaccine Act authorizes a special master to find that “the first symptom . . . of an injury . . . described in a petition occurred within the time period described in the Vaccine Injury Table even though the occurrence of such symptom . . . was not recorded or was incorrectly recorded as having occurred outside such period.”

Analysis

Ms. Murphy received a flu vaccination on December 4, 2017. The parties do not dispute the date of vaccination.

Ms. Murphy asserted that she had painful sensations by Christmas 2017. See exhibit 7 (petitioner’s affidavit) ¶ 3. However, Dr. Barbara Morlan reported normal functions in Ms. Murphy’s nerves after an examination on January 29, 2018. Exhibit 2 at 23-25. Ms. Murphy has challenged the accuracy of some of Dr. Morlan’s medical records. Exhibit 15.

At the hearing, Ms. Murphy was a credible witness. Ms. Murphy testified that her muscle twitching began after her December 4, 2017 flu vaccination. She further testified that the muscle twitching was sporadic, happened more often at night, occurred three to four times a day, and lasted for less than a minute.

Ms. Murphy’s medical records are consistent with her testimony that her muscle twitching began after vaccination. Dr. Morlan’s record from January 29, 2018, created six weeks after Mr. Murphy claims her muscle twitching began, shows that Ms. Murphy was experiencing muscle twitching at that time. Exhibit 16 at 61. This record, created long before litigation, is credible. No medical records undermine the assertion that Ms. Murphy was experiencing muscle twitching at this time. Additionally, Ms. Murphy’s testimony that her muscle twitching was sporadic helps explain why Dr. Birnbaum or Dr. Cantrell may not have detected the problem.

A competent petitioner's testimony regarding the onset of her symptoms is credible evidence. See James-Cornelius v. Sec'y of Health & Hum. Servs., 984 F.3d 1374, 1380 (Fed. Cir. 2021). Therefore, the evidence preponderates in favor of crediting Ms. Murphy's testimony regarding the onset of her symptoms.

Accordingly, the undersigned finds Ms. Murphy's muscle twitching began around December 10, 2017. However, this finding does not resolve all issues. Ms. Murphy still has the burden to establish that the flu vaccination was the cause-in-fact of her peripheral neuropathy. Expert reports will likely be necessary to support vaccine-causation. The parties may also wish to explore settlement.

Conclusion

Preponderant evidence shows that Ms. Murphy's muscle twitching began on December 10, 2017. Ms. Murphy shall file a status report proposing potential next steps in the case by **Friday, June 3, 2022**.

IT IS SO ORDERED.

s/ Christian J. Moran
Christian J. Moran
Special Master