

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1900V

Filed: June 26, 2023

UNPUBLISHED

REBECCA JOAN MILLER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for petitioner.

Austin Joel Egan, U.S. Department of Justice, Washington, DC, for respondent.

DECISION¹

On December 18, 2020, petitioner filed a claim under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34 (2012), alleging that she suffered a Table Injury of SIRVA in her left shoulder as a result of her October 19, 2019 influenza (“flu”) vaccinations. (ECF No. 1.) This case was initially assigned to the Special Processing Unit based on the allegations in the petition. (ECF No. 4.) However, on November 5, 2021, respondent filed his Rule 4(c) report recommending against compensation. (ECF No. 19.) On September 29, 2022, Chief Special Master Corcoran entered a Decision dismissing petitioner’s Table claim after finding that petitioner had not established that onset of her shoulder pain occurred within the requisite forty-eight hours of vaccination. (ECF No. 30.) This case was subsequently reassigned to the undersigned’s docket. (ECF No. 31.) On October 3, 2022, I ordered petitioner to file an expert report to support a cause-in-fact claim.

On June 23, 2023, petitioner filed a Motion for a Decision Dismissing her Petition. (ECF No. 43.) Petitioner indicated that “[f]ollowing several discussions with experts, as

¹ Because this document contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the document 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, I agree that the identified material fits within this definition, I will redact such material from public access.

well as review of CSM finding of fact regarding onset,” petitioner was “ultimately unable to retain an expert to support her case.” (*Id.* at 2.) Petitioner further stated that she “understands that a decision dismissing her Petition will result in a judgment against her. Petitioner has been advised that such a judgment will end all of her rights in the Vaccine Program.” (*Id.* at 2.)

To receive compensation in the Vaccine Program, petitioner must prove either (1) that she suffered a “Table Injury” – *i.e.*, an injury falling within the Vaccine Injury Table – corresponding to a covered vaccine, or (2) that she suffered an injury that was actually caused by a covered vaccine. See §§ 13(a)(1)(A), 11(c)(1). To satisfy her burden of proving causation in fact, petitioner must show 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 Health & Human Servs.*, 418 F.3d 1274, 1278 (Fed. Cir. 2005). The Vaccine Act, 42 U.S.C. § 300aa-13(a)(1), prohibits the undersigned from ruling for petitioner based solely on her allegations unsubstantiated by medical records or medical opinion.

Petitioner’s medical records do not support her allegations by a preponderance of the evidence and she did not file a medical opinion from an expert in support of her allegations. Accordingly, the undersigned **GRANTS** petitioner’s Motion to Dismiss and **DISMISSES** this petition for failure to establish a *prima facie* case of entitlement to compensation.

CONCLUSION

This case is now **DISMISSED**. The clerk of the court is directed to enter judgment in accordance with this decision.²

IT IS SO ORDERED.

s/Daniel T. Horner
Daniel T. Horner
Special Master

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