



A petitioner may prevail by proving either that (1) the vaccinee suffered an injury listed on the Vaccine Injury Table with onset beginning within a corresponding time period following receipt of a corresponding vaccine (a “Table Injury”), for which causation is presumed or that (2) the vaccinee suffered an injury that was actually caused by a vaccine. In this case, petitioner was alleging she suffered a Table-GBS as a result of receiving the flu vaccine.

The Federal Circuit has determined that in certain instances, “if there is a dispute as to the nature of a petitioner’s injury, the special master may opine on the nature of the petitioner’s injury.” *Contreras v. Sec’y of Health & Hum. Servs.*, 844 F.3d 1363, 1368 (Fed. Cir. 2017), *citing Hibbard v. Sec’y of Health & Hum. Servs.*, 698 F.3d 1355 (Fed. Cir. 2012); *see also Locane v. Sec’y of Health & Hum. Servs.*, 686 F.3d 1375 (Fed. Cir. 2012); *Broekelschen v. Sec’y of Health & Hum. Servs.*, 618 F.3d 1339 (Fed. Cir. 2010)). At times the vaccine causation “question turns on the determination of the injury.” *Broekelschen v. Sec’y of Health & Hum. Servs.*, 618 F.3d 1339, 1349 (Fed. Cir. 2010). In *Lombardi*, the Federal Circuit explained: “The function of a special master is not to ‘diagnose’ vaccine-related injuries, but instead to determine ‘based on the record evidence as a whole and the totality of the case, whether it has been shown by a preponderance of the evidence that a vaccine caused the petitioner’s injury.’” *Lombardi*, 656 F.3d at 1343, *citing Andreu v. Sec’y of Health & Hum. Servs.*, 569 F.3d 1367, 1382 (Fed. Cir. 2009).

Even though petitioner filed medical records and expert reports to support her claim, she has been unable to demonstrate that she suffered the injury she alleged by preponderant evidence. Accordingly, she cannot demonstrate that the vaccine was the cause of her injury. Thus, the information in the record indicates that there is insufficient evidence presented at this time to justify an award.

In light of petitioner’s motion requesting a decision dismissing his petition, a further investigation is unwarranted. Petitioner’s motion for a decision dismissing her petition is **GRANTED** and the petition is hereby **DISMISSED**. **The Clerk of the Court shall enter judgment accordingly.**<sup>3</sup>

**IT IS SO ORDERED.**

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

---

<sup>3</sup> Entry of judgment is expedited by each party’s filing notice renouncing the right to seek review. Vaccine Rule 11(a).