



which resulted in his death. Ms. Kline worked to gather and file medical records throughout 2022 and 2023.

The Secretary filed his Rule 4(c) report on October 20, 2023, contesting entitlement. The Secretary argued that the onset of Richard's GBS did not begin until nine weeks after his vaccination, which would not fit within the appropriate timeframe on the Table. Resp't's Rep. at 14. The Secretary further argued that treating doctors diagnosed CIDP, and Ms. Kline had not established that Richard had GBS. Id. at 15-16. Finally, the Secretary argued that Ms. Kline had not yet provided a reliable medical theory or a logical sequence of cause and effect, and that no treating doctors had attributed Richard's condition to the vaccine. Id. at 16-17.

The case was reassigned to the undersigned on December 19, 2023. A set of draft expert instructions were issued, and Ms. Kline was ordered to file an expert report by May 17, 2024. Order, issued Jan. 18, 2024. On May 16, 2024, Ms. Kline moved for additional time to consider her options to dismiss the petition. A status conference was held, during which the undersigned explained petitioner's options. See Order, issued May 23, 2024. On June 11, 2024, Ms. Kline moved to dismiss the case. This matter is now ready for adjudication.

## **II. Analysis**

To receive compensation under the National Vaccine Injury Compensation Program ("Program"), a petitioner must prove either 1) that the vaccinee suffered a "Table Injury"—i.e., an injury falling within the Vaccine Injury Table—corresponding to one of the vaccinations, or 2) that the vaccinee suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1).

In this case, Ms. Kline filed medical records. Nonetheless, Ms. Kline wishes to have her claim dismissed and judgment entered against her. Though Ms. Kline filed this motion pursuant to 42 U.S.C. § 300aa-21(a) (regarding voluntary dismissal), the undersigned will construe this as a motion filed pursuant to 42 U.S.C. § 300aa-21(b) (regarding involuntary dismissal), given Ms. Kline's clear intent that a judgment issue in this case, protecting her right to file a civil action in the future. See Pet'r's Mot., filed June 11, 2024 at 2.

To conform to section 12(d)(3), a decision must “include findings of fact and conclusions of law.” For causation-in-fact cases, the Federal Circuit has defined elements of a petitioner’s claim. Petitioners bear a burden to show by a preponderance of the evidence that the vaccination brought about their injury by providing:

- (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 & Hum. Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005). Ms. Kline did not present a medical theory causally connecting the flu vaccination and her husband’s condition, nor has she shown that 9 weeks is an appropriate timeframe for the onset of symptoms after vaccination.

Furthermore, a petitioner bears the burden of establishing that he suffers from a condition for which he seeks compensation. Broekelschen v. Sec’y of Health & Human Servs., 618 F.3d 1339, 1346 (Fed. Cir. 2010). Although Richard’s working diagnosis was GBS, the neurologist noted that certain symptoms were “atypical for GBS/AIDP,” and that doctors were “exploring other possibilities.” Exhibit 2 at 405 (May 13, 2019). Richard was ultimately diagnosed with CIDP. Exhibit 4 at 28 (September 1, 2019). Ms. Kline has not met her burden to establish that her husband suffered from GBS, the condition alleged in the petition. See Lombardi v. Sec’y of Health & Human Servs., 656 F.3d 1343, 1353-56 (Fed. Cir. 2011).

**Thus, the Motion for Decision is GRANTED and this case is DISMISSED WITH PREJUDICE for insufficient proof. The Clerk shall enter judgment accordingly. See Vaccine Rule 21(b).**

**IT IS SO ORDERED.**

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