

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-1401V

Filed: July 20, 2017

Unpublished

KAREN AEBIG,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Petitioner's Motion for a Decision  
Dismissing Petition; Influenza (Flu)  
Vaccine; Shoulder Injury; Insufficient  
Proof of Causation; Vaccine Act  
Entitlement; Denial Without Hearing;  
Special Processing Unit (SPU)

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

*Mallori B. Openchowski, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION** <sup>1</sup>

**Dorsey**, Chief Special Master:

On October 26, 2016, Karen Aebig (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act” or “Program”).<sup>3</sup> Petitioner alleges that she suffered injuries to her right shoulder as a result of an influenza vaccination she received on October 26, 2013. Petition at 1. The information in the record does not show entitlement to an award under the Program.

On July 20, 2017, petitioner moved for a decision dismissing her petition, acknowledging that insufficient evidence exists to demonstrate entitlement to

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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). 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.

<sup>2</sup> 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 (2012).

<sup>3</sup> The case was assigned to the Special Processing Unit (“SPU”) of the Office of Special Masters.

compensation. (ECF No. 21). Petitioner indicated in her motion that “[a]n investigation of the facts and science supporting her case ha[s] demonstrated to petitioner that she will be unable to prove that she is entitled to compensation in the Vaccine Program.” *Id.* Petitioner further indicated that she “understands that a decision by the [undersigned] dismissing her petition will result in a judgment against her. [She] has been advised that such a judgment will end all of her rights in the Vaccine Program.” *Id.*

To receive compensation under the 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) and 11(c)(1). Examination of the record does not disclose any evidence that petitioner suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that petitioner’s alleged injury was vaccine-caused.

Under the Vaccine Act, a petitioner may not be awarded compensation based on the petitioner’s claims alone. Rather, the petition must be supported by either the medical records or by a medical opinion. § 13(a)(1). In this case, the record does not contain medical records or a medical opinion sufficient to demonstrate that petitioner was injured by a 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.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master