

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: August 4, 2020

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MARY LOU DVORAK,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 19-1544V

Special Master Sanders

Dismissal; Influenza (“Flu”) Vaccine;
Transverse Myelitis (“TM”); Death

Harrison Long, Rawls Law Group, Richmond, VA, for Petitioner.

Althea Davis, United States Department of Justice, Washington, D.C., for Respondent.

DISMISSAL¹

On October 3, 2019, Mary Lou Dvorak (“Petitioner”) filed a petition for compensation on behalf of her deceased husband, Henry Dvorak, under the National Vaccine Injury Compensation Program (“Vaccine Program” or “Program”). 42 U.S.C. § 300aa-10 to 34 (2012). Petitioner alleged that Mr. Dvorak developed transverse myelitis (“TM”) which resulted in permanent extremity weakness, partial paralysis, and death as a result of the influenza (“flu”) vaccine he received on November 13, 2017. Pet. at 1, ECF No. 1. At this time, the information in the record, however, does not show entitlement to an award under the Program.

On July 29, 2020, Petitioner filed an unopposed motion for a decision dismissing her petition. ECF No. 19. In her motion, Petitioner indicated that “for reasons personal to [her]...she no longer would like to proceed with the case.” *Id.* at 1. She continued, “to proceed any further would be unreasonable and would waste the resources of the Court, the respondent, and the Vaccine Program.” *Id.* Respondent had no objection to Petitioner’s motion. *Id.*

¹ This Decision shall be posted 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). **This means the Decision will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), a party has 14 days to identify and move to delete medical or other information that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, the I agree that the identified material fits within the requirements of that provision, such material will be deleted from public access.

To receive compensation under the Program, Petitioner must prove either (1) that Mr. Dvorak suffered a “Table Injury”—i.e., an injury falling within the Vaccine Injury Table—corresponding to the vaccination, or (2) that he suffered an injury that was actually caused by a vaccine. *See* §§ 13(a)(1)(A), 11(c)(1). An examination of the limited record to date did not uncover evidence that Mr. Dvorak suffered a “Table Injury.” Further, the record does not contain persuasive evidence that Mr. Dvorak’s alleged injury was caused by the flu vaccine.

Under the Act, petitioners may not be given a Program award based solely on their claims alone. Rather, the petition must be supported by medical records or the opinion of a competent physician. § 13(a)(1). In this case, the submitted medical records are insufficient to prove Petitioner’s claim, and Petitioner has not filed a supportive opinion from an expert witness. Therefore, this case must be **dismissed for insufficient proof. The Clerk shall enter judgment accordingly.**²

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of a notice renouncing the right to seek review.