

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: March 11, 2008

DAVID BAILEY,)	
)	
)	PUBLISHED
)	
Petitioner,)	No. 06-464V
)	
v.)	Prior Ruling Denying Motion for
)	Ruling Absent Evidentiary
SECRETARY OF THE DEPARTMENT)	Hearing; Petitioner Declines
OF HEALTH AND HUMAN SERVICES,)	Hearing; Program Claim Denied
)	
Respondent.)	
)	

Kirk A. Patrick III, Baton Rouge, LA, for petitioner.

Richard Topping, with whom were Jeffrey S. Bucholtz, Acting Assistant Attorney General, Timothy P. Garren, Director, Mark W. Rogers, Deputy Director, and Gabrielle M. Fielding, Assistant Director, United States Department of Justice, Torts Branch, Civil Division, Washington, DC, for respondent.

DECISION¹

¹ Vaccine Rule 18(b) states that all of the decisions of the special masters will be made available to the public unless an issued decision contains trade secrets or commercial or financial information that is privileged or confidential, or the decision contains medical or similar information the disclosure of which clearly would constitute an unwarranted invasion of privacy. When a special master files a decision or substantive order with the Clerk of the Court, each party has 14 days within which to identify and move for the redaction of privileged or confidential information before the document’s public disclosure.

On June 16, 2006,² petitioner, David Bailey, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (the Vaccine Program).³ Petitioner alleges that on November 8, 1997, he “received a trivalent influenza vaccination . . . [and] thereafter suffered post vaccination encephalopathy and reactive depression.” Petition ¶ 1.

On January 31, 2008, the undersigned issued a Ruling Denying Petitioner’s Motion for Decision Without Evidentiary Hearing (Ruling), which was re-issued for publication on February 12, 2008. The Ruling referenced petitioner’s filed medical records that point to and reference Dr. Strub’s diagnosis of petitioner. Dr. Strub, as petitioner’s treating neurologist filed two conclusory statements attributing petitioner’s condition to the receipt of his flu vaccination. Dr. Strub did not articulate his theory of causation, other than pointing to a temporal association between petitioner’s vaccination and his injury. Without more, the undersigned determined in her Ruling that, on the record presented, she was unable to evaluate properly whether it is more likely than not that petitioner’s alleged encephalopathy and reactive depression resulted from the trivalent flu vaccination that was administered to him on November 8, 1997. Ruling at 12.

In the issued Ruling, the undersigned afforded petitioner a period of thirty days to file a status report indicating whether he wished to move forward with the conduct of an evidentiary hearing to present the testimony of Dr. Strub or another witness qualified to offer a medical opinion of causation on petitioner’s behalf. Id. The Ruling established Wednesday, February 27, 2008, as the filing deadline for petitioner’s status report. Id.

On March 3, 2008, the undersigned issued another order noting that she had not received a filing from petitioner. The order stated that absent a filing from petitioner on or before Friday, March 7, 2008, indicating his interest in proceeding with an evidentiary hearing, petitioner’s claim would be denied for the reasons set forth in the earlier issued Ruling.

² Petitioner’s counsel re-filed the petition and supporting documentation on September 7, 2006 in compliance with the undersigned’s Order dated August 8, 2006, requesting page numbers on the submitted documents.

³ The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

To date, petitioners has not responded to the court's orders. For the reasons set forth in the undersigned's January 31, 2008 Ruling and because petitioner has declined to proceed with an evidentiary hearing, petitioner's claim for compensation under the Vaccine Program is **DENIED**.⁴

The direction in the January 31, 2008 Ruling for the parties to contact the undersigned's chambers on or before Wednesday, March 12, 2008, to schedule a status conference in this matter is now **MOOT**. Id. at 12-3.

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.