

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-605V

(Filed: February 2, 2012)

**DOROTHY E. BARCELONA, individually and
on behalf of the Estate of LOUIS EDWARD
BARCELONA, SR.,**

Petitioner,

v.

**SECRETARY OF HEALTH AND HUMAN
SERVICES**

Respondent.

UNPUBLISHED

Pro Se Petitioner's Motion for a
Decision Dismissing their Petition
and Unopposed Motion for Costs;
Insufficient Proof of Causation;
Vaccine Act Entitlement; Denial
Without a Hearing

Dorothy Barcelona, Petitioner, Baton Rouge, LA

Vincent Matanoski, Respondent, Washington, DC

DECISION¹

On September 20, 2011, petitioner, acting pro se, filed a Petition for Vaccine Compensation in the National Vaccine Injury Compensation Program (“the Program”),²

¹ Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

² The Program comprises 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. §§ 300aa-10 *et*

alleging that Louis Barcelona, her late husband, was injured by a vaccine or vaccines listed on the Vaccine Injury Table. See § 14. The information in the record does not show entitlement to an award under the Program.

On January 20, 2012, petitioner moved for a decision on the merits of the petition, acknowledging that insufficient evidence exists to demonstrate entitlement to compensation. See Petitioner's Voluntary Motion to Dismiss and Unopposed Motion for Costs (Pet'r's Motion). Included with motion was an unopposed motion for costs. See Pet'r's Motion.

To receive compensation under the Program, petitioner must prove either 1) that Edward suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of Edward's vaccinations, or 2) that Edward suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A) and 11(c)(1). Examination of the record does not disclose any evidence that Edward suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Edward'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 the vaccinee was injured by a vaccine. For these reasons and in accordance with § 12(d)(3)(A), the petitioner's claim for compensation is denied, and this case is dismissed for insufficient proof.

Petitioner also filed an unopposed motion for an award costs in this case. Petitioner is entitled to out-of-pocket expenses or costs pursuant to §§ 15(b) and (e)(1). Respondent has reviewed the motion and does not object. Petitioner seeks costs in the amount of \$450.00.³

Petitioner's request for costs is granted. Petitioner is awarded reasonable costs pursuant to §§ 15(b) and (e)(1), as the undersigned finds that the petition was brought in good faith and upon a reasonable basis, and the amount requested is reasonable and appropriate.

seq. (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

³ Although no General Order No. 9 has been filed in this case, the parties worked collaboratively to address payment of petitioner's out-of-pocket expenses.

Pursuant to §15(e), the undersigned awards costs in the amount of \$450.00, to be paid in the form of a check payable to the petitioner, Dorothy E. Barcelona.⁴

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Chief Special Master

⁴ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. See Vaccine Rule 11(a).