

OFFICE OF SPECIAL MASTERS

(E-Filed: September 5, 2006)

No. 00-657V

UNPUBLISHED

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COLE SCHOMER, a minor,)	
by his mother and natural guardian,)	
LESLIE YOST-SCHOMER,)	
)	
	Petitioner,)	Motion for Judgment on the
)	Record; Failure to Establish a
v.)	Prima Facie Case
)	
SECRETARY OF THE DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
)	
	Respondent.)	
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Clifford John Shoemaker, Vienna, VA, for Petitioner.

Traci R. Patton, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION¹

On November 7, 2000, petitioner, Leslie Yost-Schomer, as his mother and natural guardian for Cole Schomer (Cole), a minor, filed a petition pursuant to the National

¹Vaccine 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.

Vaccine Injury Compensation Program² (the Act or the Program). The petition alleges that “[o]n or about, 11/10/1997, Petitioner received hepatitis B vaccination and experienced an adverse reaction to this inoculation.” See Petition (Petn.), filed November 7, 2000. The petition states that a “fact specific description of the claimed symptoms and the nature and the extent of the injuries caused by the inoculation and the condition of the Petitioner at all relevant times will be set forth in further affidavits.” Id. at 1-2. Petitioner does not describe the specific injury alleged to have resulted from Cole’s hepatitis B vaccination,³ and petitioner never filed any additional documentation in support of statements that were made in the petition. Nor has petitioner filed any documentation in support of her claim that Cole suffered an adverse reaction to the administered hepatitis B vaccination. There is no evidence before the court to support the allegation that Cole received the hepatitis B vaccination, that Cole sustained an injury, or that the hepatitis B vaccination caused Cole’s injury.

On July 5, 2006, petitioner’s counsel filed a Motion for Judgment on the Record (P’s Motn.). The record in this case consists of the petition. Petitioner’s brief motion requests judgment on the record “as it stands,” because “[p]etitioner does not feel that he can prove causation.” P’s Motn. at 1. Petitioner also states that he “cannot find an expert to support causation in his case.” Id.

On July 20, 2006, respondent filed Respondent’s Response to Petitioner’s Motion for Judgment on the Record (R’s Response). Respondent does not object to the motion or the entry of a decision in this case. In its response, respondent states that petitioner “provided no evidence—neither medical records nor medical opinion—to support her allegation that the hepatitis B vaccination caused Cole’s alleged injuries, and thus failed to support her claim as required by law.” R’s Response at R-2 (citing 42 U.S.C. § 300aa-13(a)(1) (“The special master or court may not make [a finding for petitioner] based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.”))

Petitioner’s motion for judgment on the record is now ripe for decision.

² 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.

³ The hepatitis B vaccine is “a noninfectious viral vaccine derived by recombination from hepatitis B surface antigen and cloned in yeast cells; administered intramuscularly for immunization of children and adolescents and of persons at increased risk for infection.” Dorland’s Illustrated Medical Dictionary 1999 (30th ed. 2003).

II. Discussion

Before the court is a motion for judgment on the record “as it stands.” P’s Motn. at 1.

To establish entitlement to compensation under the Vaccine Act, petitioner must demonstrate that: (1) petitioner either received a vaccination or is a valid legal representative of the vaccinee; (2) the received vaccine at issue is a vaccine set forth in the Vaccine Injury Table; (3) the administration of the vaccination occurred in the United States; (4) the vaccinee sustained or suffered significant aggravation of an illness, disease, disability, or condition caused by the vaccine; (5) the injury has persisted for more than six months; (6) no one has previously collected an award or settlement of a civil action or damages arising from the alleged vaccine-related injury; and (7) no previous civil action has been filed in this matter. §§ 300aa-11(a), (b) and (c). Additionally, as required by § 300aa-16(a), the filing of petitioner’s claim for compensation must be timely. Petitioner’s claims alone cannot establish eligibility for compensation. § 300aa-11(a). The Vaccine Act requires that petitioner also file supporting documentation. § 300aa-11(c)(1)(A). Petitioner may substantiate her claim by filing medical records or medical opinion. § 300aa-13(a).

In this case, petitioner has filed no evidence to substantiate her claim of injury or causation. Petitioner has failed to meet the threshold requirements of the Vaccine Act to establish eligibility for compensation. Petitioner has not filed an affidavit in support of her allegation that Cole received a hepatitis B vaccination, she has not described the alleged injury, nor has she filed any medical records or any expert medical opinion to support her claim of causation.

III. CONCLUSION

Because petitioner has failed to establish a prima facie case under the Vaccine Act, she has not established entitlement to Program compensation. The court **DISMISSES** this case for want of proof. The Clerk of the Court shall **ENTER JUDGMENT** accordingly.⁴

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Special Master

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