OFFICE OF SPECIAL MASTERS

(Filed: June 19, 2006)

DO NOT PUBLISH

GOPINATHA McALPINE,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 02-0720V
	)	Entitlement
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

DECISION[1]

Petitioner, Gopinatha McAlpine (Mr. McAlpine), seeks compensation under the National Vaccine Injury Compensation Program (Program).[2] Mr. McAlpine filed a Program petition on June 20, 2002. Mr. McAlpine alleged that "[s]ince June 21, 1999," when he received a Hepatitis B vaccine, he had "experienced symptoms compatible with Hepatitis." Petition (Pet.) ¶¶ 2-3. Mr. McAlpine filed an amended Program petition on August 29, 2003. He alleged that he "developed a RHEUMATOLOGICAL/SKELETAL injury, specifically, Chronic Fatigue Syndrome (CFS)" following the administration of Hepatitis B vaccine on June 21, 1999. Amended Petition for Vaccine Compensation (Am. Pet.) ¶¶5-6.

Mr. McAlpine pursues necessarily an actual causation theory. Thus, to prevail, Mr. McAlpine must demonstrate by the preponderance of the evidence that (1) "but for" the

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[1] 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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 statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

administration of the June 21, 1999 Hepatitis B vaccine, he would not have sustained an injury, and (2) the administration of the June 21, 1999 Hepatitis B vaccine was a "substantial factor in bringing about" an injury. *Shyface v. Secretary of HHS*, 165 F.3d 1344, 1352 (Fed. Cir. 1999). The preponderance of the evidence standard requires the special master to believe that the existence of a fact is more likely than not. *See, e.g.*, *Thornton v. Secretary of HHS,* 35 Fed. Cl. 432, 440 (1996); *see also In re Winship,* 397 U.S. 358, 372-73 (1970) (Harlan, J., concurring), *quoting* F. James, CIVIL PROCEDURE 250-51 (1965). Mere conjecture or speculation will not meet the preponderance of the evidence standard. *Snowbank Enter. v. United States,* 6 Cl. Ct. 476, 486 (1984); *Centmehaiey v. Secretary of HHS*, 32 Fed. Cl. 612 (1995), *aff'd*, 73 F.3d 381 (Fed. Cir. 1995).

The mere temporal relationship between a vaccination and an injury, and the absence of other obvious etiologies for the injury, are patently insufficient to prove legal cause. *Grant v. Secretary of HHS*, 956 F.2d 1144 (Fed. Cir. 1992); *see also Wagner v. Secretary of HHS*, No. 90-1109V, 1992 WL 144668 (Cl. Ct. Spec. Mstr. June 8, 1992). Rather, Mr. McAlpine must present "a medical theory," supported by "[a] reliable medical or scientific explanation," establishing "a logical sequence of cause and effect showing that the vaccination was the reason for the injury." *Grant*, 956 F.2d at 1148; *see also Knudsen v. Secretary of HHS*, 35 F.3d 543, 548 (Fed. Cir. 1994)(citing *Jay v. Secretary of HHS*, 998 F.2d 979, 984 (Fed. Cir. 1993)). "The analysis undergirding" the medical or scientific explanation must "fall within the range of accepted standards governing" medical or scientific research. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1316 (9th Cir. 1995). Mr. McAlpine's medical or scientific explanation need not be "medically or scientifically certain." *Knudsen*, 35 F.3d at 549. But, Mr. McAlpine's medical or scientific explanation must be "logical" and "probable," given "the circumstances of the particular case." *Knudsen*, 35 F.3d at 548-49.

According to the United States Court of Appeals for the Federal Circuit (Federal Circuit), "causation can be found in vaccine cases based on epidemiological evidence and the clinical picture regarding the [injured party] child without detailed medical and scientific exposition on the biological mechanisms." *Knudsen*, 35 F.3d at 549. However, in most actual causation cases in the Program, petitioners are not able to adduce epidemiological evidence regarding a vaccination and an injury. As a result, some special masters have struggled over the years to articulate the proper method of analyzing actual causation cases that lack epidemiological evidence regarding a vaccination and an injury. *See e.g.*, *Stevens v. Secretary of HHS*, No. 99-0594V, 2001 WL 387418 (Fed. Cl. Spec. Mstr. Mar. 30, 2001); *see also Pafford v. Secretary of HHS*, 64 Fed. Cl. 19 (2005), *appeal docketed* No. 05-5105 (Fed. Cir. Apr. 12, 2005). The Federal Circuit iterated recently that the actual causation standard requires a petitioner to adduce "preponderant evidence" demonstrating: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." *Althen v. Secretary of HHS*, 418 F.3d 1274, 1278 (Fed. Cir. 2005); *see also id.* at 1281 (Under the "court's well-established precedent," a petitioner must "provide proof of medical plausibility, a medically-acceptable temporal relationship between the vaccination and the onset of the alleged injury, and the elimination of other causes.").

Congress prohibited special masters from awarding compensation "based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." § 300aa-13(a). Numerous cases construe § 300aa-13(a). The cases reason uniformly that "special masters are not medical doctors, and, therefore, cannot make medical conclusions or opinions based upon facts alone." *Raley v. Secretary of HHS*, No. 91-0732V, 1998 WL 681467, *9 (Fed. Cl. Spec. Mstr. Aug. 31, 1998); *see also Camery v. Secretary of HHS*, 42 Fed. Cl. 381, 389 (1998).

The special master monitored the development of Mr. McAlpine's claim, directing the submission of medical records and of medical opinion. Now, Mr. McAlpine moves "for a Judgment on the Record as it stands." Motion for Judgment on the Record (Motion), filed June 12, 2006, at 1. Mr. McAlpine represents that he "cannot find an expert to support causation in" the case. *Id.* As a consequence, Mr. McAlpine acknowledges that he cannot "prove causation." *Id.* Mr. McAlpine understands that his Motion will result in an adverse ruling on entitlement. *See generally id.*

The special master has canvassed thoroughly the record as a whole. He determines that Mr. McAlpine's medical records alone do not establish more likely than not that Mr. McAlpine's June 21, 1999 Hepatitis B vaccination caused actually an injury. And, as Mr. McAlpine concedes, the special master determines that Mr. McAlpine has not proffered a reliable medical opinion demonstrating that Mr. McAlpine's June 21, 1999 Hepatitis B vaccination caused actually an injury. *See* Motion at 1. Thus, in *granting* Mr. McAlpine's Motion, the special master is constrained to conclude "on the Record as it stands" that Mr. McAlpine is not entitled to Program compensation. Motion at 1.

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing the petition.

The clerk of court shall send Mr. McAlpine's copy of this decision to Mr. McAlpine by overnight express delivery.

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John F. Edwards
Special Master