

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: September 12, 2006)

DO NOT PUBLISH

CHRISTINA DELONG,)	
)	
Petitioner,)	
)	
v.)	No. 02-0162V
)	Entitlement
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

DECISION¹

Petitioner, Christina Delong (Ms. Delong), seeks compensation under the National Vaccine Injury Compensation Program (Program).² Ms. Delong filed her Program petition on March 1, 2002. *See* Petition (Pet.). She alleged that she sustained a “Lupus-like condition” after she received a Hepatitis B vaccination on March 18, 1999. Pet. ¶¶ 5-6.

Ms. Delong pursues necessarily an actual causation theory. Thus, to prevail, Ms. Delong must demonstrate by the preponderance of the evidence that (1) “but for” the administration of her March 18, 1999 Hepatitis B vaccination, she would not have been injured, and (2) the administration of her March 18, 1999 Hepatitis B vaccination was a “substantial factor in bringing about” her

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.

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 simple 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, Ms. DeLong 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). Ms. DeLong’s medical or scientific explanation need not be “medically or scientifically certain.” *Knudsen*, 35 F.3d at 549. But, Ms. DeLong’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). 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).

Since April 2, 2004, the special master has monitored the development of Ms. Delong’s claim, directing the submission of medical records and of medical opinion. Now, Ms. Delong moves “for a Judgment on the Record as it stands.” Motion for Judgment on the Record (Motion), filed September 11, 2006, at 1. Ms. Delong represents that she “cannot find an expert to support causation in” the case. *Id.* As a consequence, Ms. Delong acknowledges that she cannot “prove causation.” *Id.* Ms. Delong understands that her 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 Ms. Delong’s medical records alone do not establish more likely than not that Ms. Delong’s March 18, 1999 Hepatitis B vaccination caused actually an injury. And, as Ms. Delong concedes, the special master determines that Ms. Delong has not proffered a reliable medical opinion demonstrating that her March 18, 1999 Hepatitis B vaccination caused actually an injury. *See* Motion at 1. Thus, in *granting* Ms. Delong’s Motion, the special master is constrained to conclude “on the Record as it stands” that Ms. Delong 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.

s/John F. Edwards
John F. Edwards
Special Master