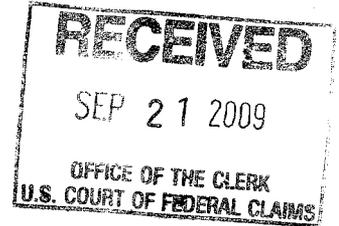


In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 07-96V
Filed: September 21, 2009



EDDY A. RAMOS, by and through *
his mother, MANDY RAMOS *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Dismissal; Influenza vaccine;
Neuralgic amyotrophy

DECISION^{1 2}

On February 8, 2007, Petitioner Mandy Ramos filed for compensation on behalf of her son, Eddy A. Ramos, under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 to -34. The petition alleges Eddy Ramos sustained neuralgic amyotrophy in his left shoulder, caused by an influenza vaccination administered on November 7, 2005. Petition at 1. At the time of this vaccination, this was Eddy's second influenza vaccination. Petition at 3 - 4. There were no records showing Eddy had a reaction to his first influenza vaccination. Respondent's Rule 4(c) Report at 3 (referencing Petitioner's Ex. 30 at 3 - 4). Also noteworthy, Eddy was seen by physicians for an episode of shoulder laxity and asymmetry in January and February of 2005, nearly one year before the onset of the alleged vaccine-related injury. Petitioner's Ex. 29 at 103; Petitioner's Ex. 30 at 5 - 6; Petitioner's Ex. 31 at 22 -24, 65. These symptoms were similar to those that lead to his diagnosis of neuralgic amyotrophy. Finally, the onset of the alleged vaccine-related injury that followed Eddy's second influenza vaccine occurred thirteen weeks after the vaccination. Petitioner's Ex. 30 at 7; Petitioner's Ex. 29 at 4.

¹ This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision.

² The undersigned intends to post this decision on the United States Court of Federal Claims's 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 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.

Respondent filed his Rule 4(c) Report on June 29, 2007. In this report, respondent noted the notable lapse of time between the vaccination and the onset of Eddy's injury. Respondent's Rule 4(c) Report at 11 - 14. Moreover, the respondent discerned that treating physicians did not attribute Eddy's injury to the flu vaccination until a discrepancy regarding the date of Eddy's vaccination was entered into the medical history. Respondent's Rule 4(c) Report at 6, 12.

By the court's order, filed July 10, 2007, the petitioner was ordered to file a medical expert report by August of 2007. Order, filed July 10, 2007. On September 5, 2007, petitioner submitted a brief letter from one of Eddy's treating physicians, Dr. James J. Guerra. Petitioner's Ex. 36 at 3. This letter stated "that Eddy Ramos developed neurologic amyotrophy . . . of his left shoulder *directly after* receiving a flu vaccination." Petitioner's Ex. 36 at 3 (emphasis added). Notably, Dr. Guerra only pointed to the temporal relationship between the vaccination and the injury. Respondent's response to Petitioner's Exhibit 36 reiterated that petitioner lacked supportive evidence linking Eddy's injury to the flu vaccination. Respondent Response to Petitioner's Ex. 36 at 5 - 8.

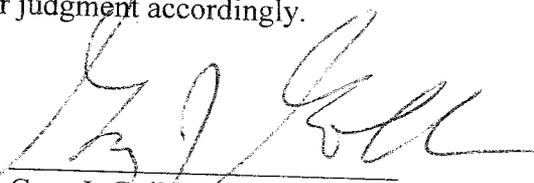
On January 30, 2008, the court ordered petitioner to file responsive evidence, including a report from Dr. Guerra, addressing the issues raised by the respondent. Order, filed January 30, 2008. In a subsequent non-compliance order filed on September 26, 2008, petitioner was granted another opportunity to file these materials. Order, filed September 26, 2008. It was later discovered that petitioner had changed residences and had not received the court's orders. Minute Entry, entered August 3, 2009. By an order filed July 9, 2009, petitioner was afforded a final opportunity to file responsive evidence, including an explanation from Dr. Guerra regarding discrepancies in his records. Order filed July 9, 2009. In total, petitioner was given nearly two years to provide supportive evidence. See Minute Entry, entered July 9, 2007; Order, filed July 10, 2007; Scheduling Order, filed July 9, 2009; Minute Entry, entered August 3, 2009.

To date, petitioner has failed to produce supportive evidence despite a great amount of time and numerous opportunities to do so. Under the Act, the special master cannot find for petitioner based upon petitioner's claim alone. The court "may not make a finding [of entitlement] based on the claims of petitioner alone, unsubstantiated by medical records or by medical opinion." 42 U.S.C.A. §300aa-13(a)(1). A review of this record shows, and the undersigned so finds, that the medical records do not substantiate petitioners' claim and petitioners did not provide a supportive expert opinion. Therefore, dismissal is appropriate.

CONCLUSION

The court has reviewed the record and finds that due to the lack of supportive medical records or an expert opinion, petitioner has failed to establish a prima facie case. Although the undersigned appreciates petitioner's earnest attempts to produce supportive evidence, the court must dismiss this case for want of proof. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.



Gary J. Golkiewicz
Chief Special Master