OFFICE OF SPECIAL MASTERS

No. 01-475V

(Filed: February 7, 2005)

KAREN PEACHEE, Petitioner,	*	
v.	*	**TO BE PUBLISHED**
SECRETARY OF HEALTH AND HUMAN SERVICES, Respondent.	*	

Ronald Homer, Boston, Massachusetts, appeared for petitioner.

Althea Davis, U.S. Department of Justice, Washington, D.C., appeared for respondent.

DECISION[1]

HASTINGS, ***Special Master***.

This is an action in which the petitioner seeks an award under the National Vaccine Injury Compensation Program (hereinafter "the Program--see 42 U.S.C. § 300aa-10 *et seq*.[2]). For the

---

[1]This document constitutes my 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 this Court shall enter judgment in accord with this decision.

Also, the petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Rule 18(b)(2) of the Vaccine Rules of this Court, this decision will be made available to the public unless petitioner files, within fourteen days, an objection to the disclosure of any material in this decision that would constitute "medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy."

[2]The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq*. (2000 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2000 ed.). I will also sometimes refer to the Act of Congress that created the Program as the "Vaccine Act."

reasons set forth below, I conclude that she is not entitled to such an award, for the reasons set forth below.

I

THE APPLICABLE STATUTORY SCHEME AND CASE LAW

Under the National Vaccine Injury Compensation Program (hereinafter the "Program"), compensation awards are made to individuals who have suffered injuries after receiving vaccines. In general, to gain an award, a petitioner must make a number of factual demonstrations, including showings that an individual received a vaccination covered by the statute; received it in the United States; suffered a serious long-lasting injury; and has received no previous award or settlement on account of the injury. Finally--and the key question in most cases under the Program--the petitioner must also establish a causal link between the vaccination and the injury. In some cases, the petitioner may simply demonstrate the occurrence of what has been called a "Table Injury." That is, it may be shown that the vaccine recipient suffered an injury of the type enumerated in the "Vaccine Injury Table" corresponding to the vaccination in question, within an applicable time period from the vaccination also specified in the Table.[3] If so, the Table Injury is presumed to have been caused by the vaccination, and the petitioner is automatically entitled to compensation, unless it is shown affirmatively shown that the injury was caused by some factor other than the vaccination. § 300aa-13(a)(1)(A); § 300aa-11(c)(1)(C)(i); § 300aa-14(a); § 300aa-13(a)(1)(B).

In other cases, however, the vaccine recipient may have suffered an injury not of the type covered in the Vaccine Injury Table. In such instances, an alternative means exists of demonstrating entitlement to a Program award. That is, the petitioner may gain an award by showing that the recipient's injury was "caused-in-fact" by the vaccination in question. § 300aa-13(a)(1)(A); § 300aa-11(c)(1)(C)(ii). In such a situation, of course, the presumptions available under the Vaccine Injury Table are inoperative. It is clear that the burden is on the petitioner to *prove* that in fact the vaccination caused the injury in question. See, e.g., *Hines v. Secretary of HHS*, 940 F. 2d 1518, 1525 (Fed. Cir. 1991); *Carter v. Secretary of HHS*, 21 Cl. Ct. 651, 654 (1990), *Strother v. Secretary of HHS*, 21 Cl. Ct. 365, 369-70 (1990), *aff'd*, 950 F. 2d 731 (Fed. Cir. 1991); *Shaw v. Secretary of HHS*, 18 Cl. Ct. 646, 650-1 (1989). Thus, the petitioner must supply "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury. A reputable medical or scientific explanation must support this logical sequence of cause and effect." *Strother*, 21 Cl. Ct. at 370; *Shaw*, 18 Cl. Ct. at 650-651; *Carter*, 21 Cl. Ct. at 654. Further, the showing of "causation-in-fact" must satisfy the "preponderance of the evidence" standard, the same standard ordinarily used in tort litigation. § 300aa-13(a)(1)(A). Under that standard, the petitioner must show that it is "more probable than not" that the vaccination was the cause of the injury. *In re Winship*, 397 U.S. 358, 371 (1970) (Harlan, J., concurring). The petitioner need not show that the vaccination

[3]The original version of the Vaccine Injury Table was contained in the statute, at § 300aa-14(a). As will be detailed below, however, the Table has been administratively amended.

was the sole cause or even the predominant cause of the injury or condition, but must demonstrate that the vaccination was at least a "substantial factor" in causing the condition, and was a "but for" cause. *Shyface v. Secretary of HHS*, 165 F. 3d 1344, 1352 (Fed. Cir. 1999).

II

BACKGROUND FACTS

The petitioner, Karen Peachee,[4] was born in 1955. The medical records filed in this case indicate that prior to 1998 she suffered many accidents and medical problems, including a number of difficulties in her joint areas, as will be discussed in detail below.

On July 1, 1998, at age 43, petitioner gave birth to a child. On August 12, 1998, she received a rubella vaccination. On September 1, 1998, petitioner telephoned her physician's office and reported that she "feels she is reacting to rubella vaccine--much joint swelling." (Ex. 1, p. 15.[5]) She was instructed to report her reaction to the Scott County Health Department. (*Id*.) Petitioner did so, and on that same date someone--apparently someone at the health department--filled out a report for the "Vaccine Adverse Event Reporting System." (Ex. 9.) That report stated that petitioner became very tired on August 25, then joint swelling began on August 27--first knees, then feet, then ankles, then wrists. (*Id*.)

On February 26, 1999, petitioner visited a physician, Dr. Wells, and reported "stiffness in her hands, especially the joints." (Ex. 4, p. 14.) On July 12, 1999, petitioner visited another physician, Dr. McElhinney, with a complaint of joint pain. (Ex. 2, p. 3.) On August 11, 1999, petitioner visited Dr. Kumar, a rheumatologist, who recorded a history of joint symptoms beginning approximately one year prior to the office visit, following a rubella vaccination. (Ex. 2, p. 7; Ex. 3, pp. 1-2.) Dr. Kumar recorded that petitioner's symptoms had improved by December 1998, but worsened thereafter. (Ex. 3, p. 1.)

Since that time, petitioner has continued to regularly visit physicians to report pain in multiple joints. Such visits occurred on November 24, 1999 (Ex. 3, p. 3); January 10, 2000 (Ex. 4, pp. 1, 4-5); May 15, 2000 (Ex. 4, pp. 1-3); July 13, 2001 (Ex. 14, p. 4); September 18, 2001 (Ex. 14, p. 6; Ex. 19, p. 2); March 27, 2002 (Ex. 14, p. 8); April 9, 2002 (Ex. 15, p. 11); May 22, 2003 (Ex. 14, p. 10); August 25, 2003 (Ex. 14, p. 12); September 11, 2003 (Ex. 19, p. 2); October 20, 2003 (Ex. 19, p. 1); February 9, 2004 (Ex. 15, p. 26); and April 6, 2004 (Ex. 14, pp. 14-15).

---

[4]In some of the medical records, made before petitioner was married to her current husband, she is listed as Karen McGovern.

[5]Petitioner has filed Exhibits numbered 1 through 23; "Ex." references will be to those exhibits. "Tr." references will be to the pages of the transcript of the evidentiary hearing held on October 6, 2004.

III

PROCEDURAL HISTORY AND STATEMENT OF ISSUES

A. Procedural history

On August 15, 2001, petitioner filed the instant Program petition, seeking Program compensation on account of the chronic joint pain that she has suffered since 1998. After proceedings before Special Master French, the petition was transferred to my docket on March 24, 2004. After I conducted a series of unrecorded telephonic status conferences in April through August of 2004, the parties agreed that I should resolve the "entitlement" issue--*i.e.*, the issue of whether petitioner has demonstrated[6] that she suffered an injury compensable under the Program--even though neither party has introduced an expert report specifically stating an opinion about the causation of *petitioner's* chronic joint pain. The parties agreed that I should evaluate the petitioner's claim by studying the petitioner's medical records and testimony introduced into the record of this case, and then applying to petitioner's case the information I have received in *prior* Program cases concerning the *general issue* of whether the rubella vaccine can cause chronic joint symptoms. (See discussion at pp. 6-10, below.) I agreed to do so, but first I elected to conduct an evidentiary hearing at which I could hear petitioner's own testimony, in an attempt to clarify certain of the facts of her medical history. I conducted that hearing on October 6, 2004. At the close of that hearing, counsel for both parties offered oral argument concerning the entitlement issue, and then agreed that I should rule upon that entitlement issue after receiving the transcript of that hearing.[7] That hearing transcript was filed on November 5, 2004.

B. Issues to be decided

Petitioner advances two different theories of entitlement to Program compensation. First, petitioner's chief contention throughout this proceeding has been that her chronic joint pain was "caused-in-fact" by her 1998 rubella vaccination. I will deal with that claim in parts IV through VIII of this Decision. Alternatively, petitioner argued briefly in a reply memorandum that she suffered the "Table Injury" known as "chronic arthritis." I will deal with that claim in part IX of this Decision.

---

[6]Petitioner has the burden of demonstrating the facts necessary for entitlement to an award by a "preponderance of the evidence." § 300aa-13(a)(1)(A). Under that standard, the existence of a fact must be shown to be "more probable than not." *In re Winship*, 397 U.S. 358, 371 (1970) (Harlan, J. concurring).

[7]On several occasions I have invited petitioner's counsel to introduce an expert opinion specific to petitioner's case, but counsel elected not to do so.

IV

CAUSATION-IN-FACT ISSUE: INTRODUCTION

As noted above, the petitioner's primary contention in this proceeding has been that her chronic joint pain was "caused-in-fact" by her rubella vaccination of August 12, 1998. This case, thus, is one of many Program cases in which petitioners have alleged that rubella vaccinations have caused chronic joint pain and/or arthritis. I have described these cases as the "rubella/arthropathy" cases, since the term "arthropathy" encompasses both *joint pain*, also known as "arthralgia," and *joint swelling*, also known as arthritis. The general history of these "rubella/arthropathy" cases is relevant to the resolution of this case.

That general history is, in fact, *crucial* to the resolution of this case, because in this case, as noted above, the petitioner has *not* relied upon an expert witness specifically supporting her claim that her joint pain was vaccine-caused. Instead, the petitioner relies on the fact that in the course of the above-described "rubella/arthropathy" cases, all decided by myself as special master, in published opinions I have developed a set of "causation criteria," stating that if a particular petitioner's case falls within those criteria, and there is no substantial evidence introduced in that particular case casting doubt on a "causation" finding, I would be inclined to infer a causal relationship between the vaccination and the petitioner's chronic arthropathy. Petitioner asserts that her own case fits within my published "causation criteria," and that, on that basis, without need for any case-specific expert testimony, I should conclude that *petitioner's* chronic arthropathy was vaccine-caused.

Respondent, on the other hand, argues that petitioner has *not* demonstrated that her chronic arthropathy was vaccine-caused. Respondent disagrees with the view that a case falling within my "causation criteria" can reasonably be deemed to be vaccine-caused. Moreover, respondent argues that, in any event, petitioner's case fails to meet two of my six criteria. Respondent, like petitioner, has not offered any case-specific expert witness concerning petitioner's case. Like petitioner, respondent urges that I should decide the issue of whether petitioner has demonstrated "causation-in-fact" based upon the record as it stands.

Given the rather unusual circumstances of this case, in which neither party has introduced a case-specific expert opinion, I will analyze and rule upon petitioner's causation claim based on the available record.[8] In doing so, I will, as both parties agree that I should, analyze not only the evidence introduced in this case, but also the evidence on the *general* "rubella/arthropathy" causation issue that I have developed in the above-mentioned "rubella/arthropathy" cases.

---

[8]It is *theoretically* possible for a special master to retain his or her own expert. As a practical matter, however, it is virtually impossible for a special master to do so, since no funds have ever been allocated to permit the special masters to hire their own experts. The uniform practice has been for the special master to rely in each case on the expert assistance provided by the parties.

Therefore, in the next three sections of this Decision, in order to analyze the petitioner's "causation-in-fact" claim, I will, in Part V, set forth the history of the "rubella/arthropathy" cases; in Part VI, explain why I conclude that *petitioner's* case does *not* fall within the "causation criteria" that I have developed in the course of those "rubella/arthropathy" cases; in Part VII, analyze whether any of the other evidence in this case supports a finding of "causation-in-fact;" and in Part VIII, summarize my reasoning concerning petitioner's "causation-in-fact" claim.

V

HISTORY OF THE "RUBELLA/ARTHROPATHY" CASES

A. Proceedings in early 1990's concerning the general causation issue

A version of the "Vaccine Injury Table" was set forth in the statute establishing the Program, at § 300aa-14(a). That statutory version of the Table was applicable to petitions filed during the first several years of the Program's experience. That version of the Table, however, contained no provision concerning arthropathy, arthritis, or similar symptoms following any vaccination. Thus, from the beginning of the Program through early 1995, a petitioner suffering from arthropathy or a similar condition after a rubella vaccination had the burden of proving that the vaccination "caused-in-fact" the condition.

During the early 1990's, various petitioners filed a large number of Program cases involving allegations that rubella vaccinations caused chronic arthropathy. Accordingly, in order to most efficiently resolve all of those cases, the undersigned special master was assigned by the Chief Special Master to undertake an inquiry into the *general issue* of whether the rubella vaccine can cause chronic arthropathy, with the hope that information and conclusions concerning that *general* causation issue, developed from the general inquiry, could be applied to each *individual* case.

Toward that goal, I initiated a series of meetings, involving counsel who each represented a large number of petitioners in Program cases involving claims of this type, and counsel on behalf of respondent. These counsel developed evidence to put before me concerning the general causation issue. They supplied a series of written reports from medical experts.[9] I also conducted an extensive

---

[9] I have established a special file in the office of the Clerk of this Court known as the "Rubella Omnibus File." In that file I have placed copies of all the evidentiary items upon which I have relied in my rulings concerning the possible causal relationship between the rubella vaccine and chronic arthropathy. That file is open for inspection or copying by any interested person. A summary of the contents of that file appears as the Appendix to this Ruling.

I hereby incorporate that entire "Rubella Omnibus File" into the record of this case by this reference. For convenience, I will not physically place a copy of that entire voluminous File into the record of this case, but it shall be considered an integral part of the record of this case. I note that counsel for both parties in this particular case are thoroughly familiar with the contents of that File. See also footnote 12, below.

search of relevant medical literature, based both upon bibliographies supplied by the aforementioned counsel and upon my own research. Then, in November of 1992, I conducted a three-day evidentiary hearing in which six medical experts, three sponsored by petitioners' counsel and three by respondent, testified concerning the general causation issue.[10]

B. My analysis in the "1993 Order"

Based upon the medical evidence and expert testimony discussed above, I concluded, in a published opinion filed on January 11, 1993, that the evidence was sufficient to support a determination that it is "more probable than not" that the rubella vaccine does cause some cases of chronic arthropathy. (I will refer to that document as the "1993 Order;" it was published as *Ahern et al. v. Secretary of HHS*, 1993 WL 179430 (Fed. Cl. Spec. Mstr. Jan. 11, 1993).) A copy of that 1993 Order was filed into the record of this case as an attachment to my order filed on March 25, 2004. In that 1993 Order, I concluded that a petitioner "more probably than not" has suffered a condition "caused-in-fact" by a rubella vaccination, and is thus entitled to a Program award, if that petitioner's case meets *all* of the following criteria:

1. The petitioner received a rubella vaccination at a time when the petitioner was 18 years of age or older.

2. The petitioner had a history, over a period of at least three years prior to the vaccination, of freedom from any sort of persistent or recurring polyarticular joint symptoms.

3. The petitioner has developed an antibody response to the rubella virus.

4. The petitioner experienced the *onset* of polyarticular arthropathic symptoms during the period between one and six weeks after the vaccination.

5. Polyarticular arthropathic symptoms continued for at least six months after the onset; or, if symptoms remitted after the acute stage, polyarticular arthropathic symptoms recurred within one year of such remission.

6. There is an absence of another good explanation for the arthropathy; the petitioner has not received a confirmed diagnosis of rheumatoid arthritis, nor a diagnosis of any of a series of specific conditions (see list at p. 10 of the 1993 Order).

Ahern, 1993 WL 179430 at *13.

---

[10]The transcript of that 1992 hearing, entitled "Omnibus Hearing *Re*: Rubella/Chronic Arthropathy Issue," is contained in the Rubella Omnibus File as part C.

In reaching that conclusion, I noted that all six of the experts who testified at the 1992 hearing, including those who testified for respondent, agreed that at least in cases in which the vaccinee experienced acute polyarticular *actual arthritis* (*i.e.*, joint *swelling*), as opposed to *arthralgia* (*i.e.*, joint *pain* without swelling), during the expected time period after vaccination, any chronic arthritis suffered by that vaccinee thereafter could reasonably be attributed to the rubella vaccination. The respondent's experts differed with the petitioners' experts, rather, chiefly as to a single issue, concerning those cases that fit the diagnostic criteria set forth above, but in which in either or both of the acute and chronic stages of the condition the individual had only *arthralgia*, without any measurable *arthritis*. In such cases the petitioners' experts opined that the chronic arthralgia was likely vaccine-caused; the respondent's experts would not make such a finding. On that point of dispute, I found the petitioners' experts to be more persuasive, for reasons that I explained in the 1993 Order.

Accordingly, I concluded in the 1993 Order that when a petitioner's case met the six criteria listed above, and there was no substantial case-specific evidence in that case pointing to some other cause, the evidence would support a conclusion that the petitioner's chronic arthropathy, whether it be chronic arthritis or arthralgia, was likely caused by the rubella vaccination.

C. Developments after the 1993 Order

After I issued the above-described 1993 Order, several developments relevant to the general causation issue occurred, which I will briefly describe.

1. Resolution of cases

As a result of the above-described proceedings that I conducted in 1992-93 concerning the general causation issue, culminating in my 1993 Order, a significant number of cases, each involving an allegation that joint symptoms were caused by a rubella vaccination, were resolved. In 71 cases decided during the years 1993 through 2001, either I concluded that the requisite showing of causation was made, or the parties agreed upon an award based on the similarities between the petitioner's case and the criteria set forth in that 1993 Order. (See, e.g., *Long v. Secretary of HHS*, 1995 WL 470286, No. 94-310 (Fed. Cl. Spec. Mstr. July 24, 1995).) In 19 cases, I found that the petitioner failed to make the required "causation" showing. (See, e.g., *Awad v. Secretary of HHS*, 1995 WL 366013, No. 92-79V (Fed. Cl. Spec. Mstr. June 15, 1995).) I dismissed four cases on procedural grounds. Finally, in 52 additional cases, the petitioner either voluntarily dismissed or simply abandoned prosecution of his or her case, apparently in light of the fact that the case plainly did not seem to fit within the 1993 Order's criteria.

2. Table Injury designation

As noted above, the Vaccine Act provides that the Secretary of Health and Human Services may administratively amend the Vaccine Injury Table. Thus, the Table was administratively modified in 1995, with the addition of "chronic arthritis," if incurred under certain specified

circumstances, as a "Table Injury" for vaccinations that include the rubella vaccine. *See* 60 Fed. Reg. 7678 (1995). A second administrative revision to the Vaccine Injury Table was promulgated in 1997, retaining "chronic arthritis" as a Table Injury for rubella vaccinations, while slightly modifying the definition of that term for Table purposes. *See* 62 Fed. Reg. 7685, 7688 (1997). Those Table revisions adopted criteria for the new "chronic arthritis" Table Injury which are similar, but not identical, to the criteria that I set forth for "causation-in-fact" in my 1993 Order. The chief difference is that to qualify under the new Table Injury category, a petitioner must, as noted above, establish that he or she suffered "objective evidence * * * of acute *arthritis* (joint swelling)." (42 C.F.R. § 100.3(b)(6)(A) (1997 ed.), emphasis added.) That is, it must be demonstrated that a physician observed actual *arthritis* (joint *swelling*), not merely *arthralgia* (joint *pain*), in both the acute stage and the chronic stage of the vaccinee's illness. (42 C.F.R. § 100.3(b)(6)(A) and (B) (1997 ed.).) This requirement is more strict than the criteria that I adopted in my 1993 Order, in which I concluded that "causation-in-fact" of an arthropathic condition might be established even where, during the acute stage and/or the chronic stage, only *arthralgia* was reported.

Since 1995, five Program petitioners have successfully established that they have suffered compensable injuries under the new "chronic arthritis" Table Injury category. A number of other cases, however, have involved situations in which, as in this case, a petitioner has suffered chronic arthropathy, but not under circumstances which correspond precisely to those set forth in the "chronic arthritis" Table Injury's regulatory definition. In each of these cases, the petitioner has sought a finding of "causation-in-fact."

3. Additional inquiry in 2001-2002

During the late 1990's, several medical studies relevant to the general causation issue were completed, and the results of those studies were published. Accordingly, I determined that I should re-analyze the general causation issue in light of the new studies. Again, attorneys representing the petitioners and respondent submitted expert reports, and a hearing, at which six such experts testified, was held in 2001.[11]

After that hearing, I reviewed the general causation issue again, in light of the 1990's studies and the recent expert reports and hearing testimony. On December 13, 2002, I published a document entitled "Analysis of Recent Evidence Concerning General Rubella/Arthropathy Causation Issue." (I will refer to that document as the "2002 Analysis;" it was published as *Snyder et al v. Secretary of HHS*, 2002 WL 3196574 (Fed. Cl. Spec. Mstr. Dec. 13, 2002). A copy of that 2002 Analysis was filed into the record of this case as an attachment to my order filed on March 25, 2004.) In that 2002 Analysis, I concluded that while the overall argument for the general proposition that the rubella vaccine causes chronic arthropathy had been somewhat weakened, nevertheless a sufficient "causation-in-fact" case could still conceivably be made in an individual case. Considering all the

[11]A collection of the expert reports submitted in preparation for the 2001 hearing is contained at part D of the "Rubella Omnibus File." The transcript of the 2001 hearing constitutes part E of that File.

evidence available, I concluded that the criteria set forth at p. 7 above are still quite relevant to my analysis of any individual case. I modified those criteria in the two areas suggested by the more recent evidence. That is, (1) the vaccinee need only have been *past puberty* (not 18 years of age) at the time of vaccination; and (2) the onset of polyarticular symptoms must have taken place between *seven and 21 days* after vaccination (rather than between one and six weeks post-vaccination). Therefore, the newly-modified criteria stood as follows:

1. The petitioner received a rubella vaccination at a time when the petitioner was past puberty.

2. The petitioner had a history, over a period of at least three years prior to the vaccination, of freedom from any sort of persistent or recurring polyarticular joint symptoms.

3. The petitioner has developed an antibody response to the rubella virus.

4. The petitioner experienced the onset of polyarticular (*i.e.*, in *multiple* joints) joint symptoms during the period between seven and 21 days after the vaccination.

5. Polyarticular joint symptoms continued for at least six months after the onset; or, if symptoms remitted after the acute stage, polyarticular joint symptoms recurred within one year of such remission.

6. There is an absence of another good explanation for the joint symptoms.

Snyder, 2002 WL 3196574 at *8, *20. Further, I stated that if any individual case falls squarely within those modified criteria, *and* there are no special circumstances of the case that cast doubt on a causal relationship, *and* there is no additional medical evidence submitted in that case that alters my view of the general causation issue, then I would be likely to find "causation-in-fact" in that case. In other words, considering all the evidence that I had reviewed up until that point in time, I found the evidence sufficient to support a finding of causation in a particular case, *if* that case falls within those modified criteria, in the absence of countervailing evidence.

VI

PETITIONER'S CASE DOES NOT MEET THE "CAUSATION CRITERIA" SET FORTH IN MY 2002 ANALYSIS

As noted above, petitioner's basic argument in this case is that petitioner's case meets the six "causation criteria" set forth in my "2002 Analysis." After careful consideration, however, I conclude that petitioner's case fails to fulfill at least one of those criteria. In reaching this conclusion, I have considered all of the evidence concerning the *general causation issue* that I heard during both the early 1990's proceedings and the 2001-2002 proceedings described above, as

contained in the Rubella Omnibus File;[12] I have also considered, of course, the evidence specific to

[12]I note that counsel for both parties have been well aware that I would utilize the evidence contained in the Rubella Omnibus File, and the knowledge concerning the general rubella/arthropathy causation issue that I have gained in the course of the above-described general proceedings concerning that issue, in resolving this case. Indeed, the entire idea of the proceedings on the general issue was that information gained in those proceedings *would be applied to individual cases*. Moreover, petitioner's entire "causation-in-fact" argument *in this case* is that I *should* apply to her case the causation criteria developed in the proceedings concerning the general issue.

In this regard, I note that it seems very appropriate in Program cases that a special master will at times utilize information and knowledge gained in one Program case in resolving another Program case. The chief reason is the very nature of the factfinding system set up under the Program. Congress assigned this factfinding task to a very small group of special masters, who would hear, without juries, a large number of cases involving a small number of vaccines. Congress gave these masters extremely broad discretion in deciding how to accept evidence and decide cases. (*See*, *e.g.*, § 300aa-12(d)(2).) Congress charged these masters to resolve such cases speedily and economically, with the minimum procedure necessary, and to avoid if possible the need for an evidentiary hearing in every case. *Id*; *see also* H.R. Rept. No. 99-660, 99th Cong., 2nd Sess., at 16-17 (*reprinted in* 1986 U.S.C.C.A.N. 6344, 6357-58). Congress even specified that a master should be "vigorous and diligent in *investigating*" Program factual issues (H.R. Rept. 99-660, *supra* at 17 (emphasis added)), in an "inquisitorial" fashion (H.R. Rept. No. 101-247, at 513 (*reprinted in* 1989 U.S.C.C.A.N. 1906, 2239)), indicating that a master can and should actively seek out, on his own, evidence beyond that presented by the parties to a particular case. Given this factfinding system, it would appear quite likely that Congress intended that the special masters would gain expertise in factual issues, including "causation-in-fact" issues, that would repeatedly arise in Program cases. It would appear that Congress *intended* that knowledge and information gained by the masters in the course of Program cases would be applied by the masters to other Program cases, when appropriate. A number of published opinions have recognized that this Congressional intent is implicit in the factfinding system devised by Congress. See, e.g., *Ultimo v. Secretary of HHS*, 28 Fed. Cl. 148, 152-53 (1993); *Loe v. Secretary of HHS*, 22 Cl. Ct. 430, 434 (1991).

The idea of utilizing an "omnibus proceeding" to gather information applicable to a significant number of Program cases, therefore, would seem to fit clearly within this Congressional intent. This procedure not only allows a special master to bring special expertise to particular cases, but also helps the Program to accomplish the Congressional goals of speedy and economical resolution of cases. This general procedure, therefore, has been utilized not only in the "rubella arthropathy" cases before me, but also for two other large groups of cases, *i.e.*, the "poliomyelitis" cases before Chief Special Master Golkiewicz (see, e.g., *Gherardi v. Secretary of HHS*, No. 90-1466V, 1997 W.L. 53449 (Fed. Cl. Spec. Mstr. Jan. 24, 1997)) and the "tuberous sclerosis" cases before Special Master Millman (see, e.g., *Costa v. Secretary of HHS*, 26 Cl. Ct. 866, 868 (1992)). This general procedure is also currently being utilized, at the request of the petitioners, in the "thimerosal/autism" cases currently pending before myself (see the *Autism General Order #1*, 2002 WL 31696785 (Fed. Cl. Spec. Mstr. July 3, 2002)).

Of course, the special masters managing these groups of cases have also taken care to ensure that the rights of *individual petitioners* to fair resolution of their cases is not lost in the efficiency of

petitioner's own case.

To be sure, petitioner's case meets *some* of the six "causation criteria" set forth in my 2002 Analysis set forth above at p. 10--namely, criteria #1, 3, 4, and 5. Petitioner received a rubella vaccination at the age of 43 years. (Criterion #1.) After the vaccination, she developed an antibody response to the rubella virus. (Criterion #3--see Ex. 4, p. 6.) About 13 days after vaccination, petitioner experienced an apparent reaction to that vaccination that included pain in multiple joints. (Criterion #4, see Ex. 9.) And, petitioner has continued to experience intermittent pains in multiple joints since then. (Criterion #5.)

However, respondent disputes whether petitioner's case meets criteria #2 and #6. I conclude that petitioner's case *fails* to meet criterion #2; therefore, I conclude that petitioner has failed to establish "causation-in-fact" by the possible avenue of satisfying the six criteria.

A. Petitioner's case fails to meet Criterion #2

Criterion #2 of my "causation criteria," after modification in the 2002 Analysis, currently stands as follows:

> 2. The petitioner had a history, over a period of at least three years prior to the vaccination, of freedom from any sort of persistent or recurring polyarticular joint symptoms.

Unfortunately for petitioner, however, the record of this case indicates that petitioner likely *did* experience persistent or recurring polyarticular joint symptoms during the three years prior to her rubella vaccination of August 12, 1998.

On this point, I note first that I am *not* relying upon the records of two *accidental* injuries that petitioner suffered in 1995 and 1997. That is, medical records indicate that petitioner broke a finger in January of 1995, resulting in a series of reports of pain in that finger between January and July of that year. (Ex. 3, pp. 5-7.) Further, petitioner suffered an accident in early 1997 in which she fell at a store, resulting in knee and low back pain. (Ex. 1, p. 4; Ex. 2, pp. 1, 4; Ex. 12, p. 1.) That knee

---

an "omnibus proceeding." For example, before, during, and after the general proceedings that I have conducted concerning this rubella/arthropathy causation issue, I have stressed to all counsel in the rubella/arthropathy cases that each party in each individual case has the right to offer additional relevant evidence, and to challenge the validity of the evidence received during the "omnibus proceeding."

Given the above-described Program factfinding system devised by Congress, accompanied by the procedural safeguards for individual cases described above, I am satisfied that it is appropriate for me to utilize the evidence gained in the "omnibus proceeding" in resolving *individual* petitioners' cases. Neither the respondent, nor any petitioner in any individual Program case, has ever argued otherwise.

pain was mentioned during visits to physicians on March 6, July 16, and July 30 or 31 of 1997, and thereafter back pain only, with no further mention of knee pain, was reported by petitioner at repeated visits during August of 1997 through March 16, 1998. (Ex. 2, pp. 3-4.) I conclude that those particular reports of pain--in fingers in 1995, and in knees and back in 1997-98--are not of crucial relevance to my inquiry concerning petitioner's chronic arthropathy. I accept that those pain complaints were likely due to the two accidents in question, and are not related to the petitioner's later polyarticular complaints. I do *not* view those above-cited pain reports as disqualifying petitioner under Criterion #2.[13]

I rely, rather, on certain *other* notations in petitioner's records, made in 1997; when taken together, I find those notations to be disqualifying with respect to Criterion #2. First, I note that when petitioner on July 16, 1997, was asked a series of questions about whether she "ever had" certain conditions, she responded "yes" as to arthritis. (Ex. 12, p. 3.) Second, when she filled out a medical questionnaire on July 30, 1997, she indicated that she was "now" experiencing "swelling of ankles," "leg pain on walking," "arthritis," and "swollen joints." (Ex. 2, p. 1.) Third, on November 16, 1997, she filled out another medical questionnaire, answering "yes" to the question "do you have joint pain?," and answering "minimal" to the question "do you have arthritis?" (Ex. 6, p. 7.) Further, petitioner also reported to her gastroenterologist on that same date, November 16, 1997, that she was experiencing "some arthralgias." (Ex. 6, p. 10.)

Those notations indicate that on several occasions in 1997, petitioner was reporting to her physicians that she was experiencing "swelling of ankles," "arthritis," "swollen joints," "joint pain," "minimal arthritis," or "some arthralgias." *None* of those notations indicated a *particular* joint, nor referred to a *specific* injury. Rather, those complaints sound much like what petitioner has reported *since* her rubella vaccination in 1998. And, as discussed in my 1993 Order and 2002 Analysis, reports of polyarticular joint pain in the years immediately preceding the rubella vaccination in question are *extremely problematic* to a conclusion that a person's chronic post-vaccination joint pain was vaccine-caused. That is, *all* of the experts who testified in the 1992 and 2001 hearings, including those who testified on behalf of the *petitioners*, indicated that a conclusion of "vaccine-causation" in a particular case would be reasonable *only* if the vaccinee had been *free* from any polyarticular joint complaints, other than any complaints associated with a specific traumatic injury, for at least three years pre-vaccination. That is simply not the case with respect to petitioner.

To be sure, I recognize that at the time of the notations made in *July* of 1997, petitioner was still reporting knee and back pain as a result of her accident at the store in early 1997, and that in *November* of 1997 petitioner was still reporting back pain from that accident. However, the notations in question, considered together, seem to indicate joint complaints *in addition* to her primary knee and back complaints. One notation, in particular, specifically refers to "swelling of *ankles*." (Ex. 2, p. 1, emphasis added.)

---

[13]Of course, the finger pain seems to have resolved around mid-1995, so that, in any event, it resolved slightly more than three years prior to petitioner's vaccination of August 1, 1998.

In addition, I note that I listened closely when petitioner, at the evidentiary hearing, attempted to explain those particular medical record notations. (Tr. 31-36, 41-42, 46-47.) Though I certainly did not believe that petitioner was being dishonest, those explanations simply failed to persuade me that petitioner did not have persistent recurring polyarticular complaints during 1997. Petitioner stated that those notations indicated her belief at that time that she was "going to get arthritis" at some time in the *future*, not that she had ever been diagnosed with arthritis. (Tr. 31, 33, 42.) But petitioner also indicated that her thinking in 1997 was that "I thought of arthritis as being, oh, if you have stiffness in joints, and you have soreness, you have arthritis." (Tr. 32-33.) Thus, she acknowledged that in 1997 she did have "stiffness" and "soreness" in joints. Similarly, she later acknowledged that in 1997 she experienced "very mild pain * * * in joints." (Tr. 35.) Thus, petitioner's hearing testimony in this case in fact confirmed that in 1997 she was experiencing "stiffness," "soreness," and "pain" in her joints.

Petitioner also testified that on the November 1997 questionnaire, when she indicated "joint pain" and "minimal arthritis," she meant only in joints that she had *previously injured*, not *all* her joints. (Tr. 35-36.) But neither in that questionnaire, nor in any of the 1997 notations set forth above, is there any indication that petitioner was referring only to those specific joints that she had previously injured. For example, if petitioner had told Dr. Pratt on November 16, 1997, that her arthralgias were confined to certain specific previously-injured joints, Dr. Pratt likely would have noted which joints, rather than writing "some arthralgias," which would seem to refer to pain in *joints in general*. (Ex. 6, p. 10.) Moreover, in one record petitioner indicated current "swelling of ankles," specifically referring to joints which do *not* fall within her list of previously-injured joints.

Petitioner also seems to argue that I should disregard her 1997 joint pain reports because, she says, the pain in 1997 was substantially *lesser* in severity than her arthralgia since the vaccination. I, of course, have no way of measuring the severity of pain. But I note that the 1997 arthralgias were at least of sufficient degree that petitioner mentioned them to her physicians. More importantly, the experts who testified in the 1992 and 2001 hearings seemed to view *any* history of chronic, pre-existing pain in multiple joints, *regardless* of reported severity, as a factor that would dissuade them from concluding that a person's chronic post-vaccination arthralgias were vaccine-caused. Thus, I cannot rely on the opinion of *those experts*, as petitioner would have me do, to reach the conclusion that this petitioner's chronic pain was vaccine-caused.

In short, petitioner has not presented her own expert witness in this case. She has elected to rely, in effect, upon the expert testimony of those experts who testified in the 1992 and 2001 hearings concerning the *general* rubella/arthropathy causation issue. However, as explained above, those experts testified that they could infer "vaccine-causation" *only* when the vaccinee had a history free from chronic pre-existing pain in multiple joints during the three-year period pre-vaccination. And as I interpret the evidence, that is simply not the case with respect to petitioner, who does seem to have reported chronic pain in multiple joints to several physicians during 1997. Therefore, I

cannot find "causation-in-fact" in this case based upon the "causation criteria" developed in my "1993 Order" and "2002 Analysis" documents.[14]

VII

ADDITIONAL ANALYSIS OF RECORD

The fact that I have found that petitioner's case does not meet the "causation criteria" set forth in my "2002 Analysis" does not completely end the inquiry in this case. That is, meeting those criteria is not necessarily the *only* method by which a petitioner might show that her chronic arthropathy was "more probably than not" caused by her rubella vaccination. As in every case, I must evaluate the *entire record* of this case to determine whether the evidence contained therein preponderates in favor of a conclusion that petitioner's chronic arthropathy was vaccine-caused.

In this case, in addition to arguing that petitioner's case meets the above-described "causation criteria," petitioner's only other very brief bit of argument has been to point to a few notations in petitioner's medical records, which, petitioner suggests, indicate that some of petitioner's *treating physicians* may have thought that petitioner's post-vaccination joint pain was vaccine-caused. (See "Petitioner's Motion for a Ruling on the Record" filed February 13, 2004, pp. 9-10.) However, after considering the notations to which petitioner points, and also fully reviewing *other* physicians' notations in the medical records concerning the possible cause of petitioner's chronic joint pain, I do *not* find that, taken as a whole, the physicians' notations provide any significant support for the proposition that petitioner's chronic joint pain was vaccine-caused.

The first records to which petitioner has pointed are the very first medical records made after petitioner's vaccination in question. That is, when petitioner telephoned her gynecologist's office on September 1, 1998, reporting joint pain and other symptoms over the previous several days, personnel of that office apparently believed that the symptoms were likely caused by her vaccination of August 12, 1998, since they advised her to report those symptoms to the county health department. (Ex. 1, p. 15.) Similarly, personnel at that health department must have reached the same conclusion, since they filled out the "Vaccine Adverse Event" report, attributing the joint swelling to the vaccination. (Ex. 9.)

However, the fact that these medical personnel concluded that the symptoms of *late August* were likely vaccine-caused sheds no significant light on the issue of the cause of petitioner's *chronic* arthralgia. That is, as the record of the 1992 and 2001 hearings on the general causation issue makes clear, it is well-accepted that the rubella vaccine sometimes causes *acute episodes* of joint symptoms about two weeks post-vaccination, usually lasting a few days. Therefore, it is completely unsurprising that any person with medical training would attribute petitioner's *acute* symptoms of late August, 1998, to her vaccination of August 12. On the other hand, it is highly controversial

[14]Since I conclude that petitioner's case does not meet Criterion #2, I need not resolve the issue of whether her case meets Criterion #6.

whether the rubella vaccine causes *chronic* joint symptoms. Therefore, these notations made on or about September 1, 1998, essentially tell us *nothing* about whether any medical personnel have concluded that petitioner's *chronic* joint complaints have been vaccine-caused.

Next, with respect to petitioner's *chronic* joint symptoms, petitioner also makes the following argument:

> Associations were also made by Karen's family physician, Dr. Tammy Wells (Pet. Ex. 4, p. 4), her rheumatologist, Dr. Usharani Kumar (Pet. Ex. 2, p. 7-8), and by Dr. Catherine Weideman (Pet. Ex. 4, p. 9).

(Pet. Motion filed 2-13-04, p. 10.) But when I review the actual medical records of those three physicians, I cannot agree that *any* of those three physicians ever concluded that petitioner's *chronic* joint pain was vaccine-caused.

First, with respect to Dr. Weideman, at the cited reference in Dr. Weideman's records (Ex. 4, p. 9), that physician wrote only that petitioner's condition was "possibly" related to the vaccination.

Second, as to Dr. Wells, at the cited page of Dr. Wells' records (Ex. 4, p. 4), I cannot see on that page any indication that *Dr. Wells* ever reached any conclusion as to the cause of petitioner's chronic joint complaints. The handwritten notes on that page seem to indicate only that *petitioner had reported* to Dr. Wells that *Dr. Kumar* had told petitioner that the pain might have been the result of her rubella vaccination.[15]

Finally, after carefully reviewing Dr. Kumar's records, I see no evidence that *Dr. Kumar* ever concluded that petitioner's chronic arthralgia was vaccine-caused. At the cited pages of Dr. Kumar's records (Ex. 2, pp. 7-8), Dr. Kumar wrote, after his first visit with petitioner, only that it is "possible" that petitioner's continuing joint pain was connected to her immunization. (Ex. 2, p. 8.) After reviewing Dr. Kumar's records of both his visits with petitioner in 1999, in August and November (see Ex. 3, pp. 1-3), I conclude that petitioner was probably *mistaken* when she told Dr. Wells on January 10, 2000, that Dr. Kumar had given her a diagnosis of vaccine-causation. It seems likely, rather, that petitioner took Dr. Kumar's mention of a "possibility," and remembered it as a definitive diagnosis.

Moreover, after reading *all* of Dr. Kumar's records (Ex. 3, Ex. 14), it appears that after initially entertaining the *possibility* of a connection between petitioner's rubella vaccination and her chronic joint pain, Dr. Kumar eventually leaned toward a *different* explanation for her joint pain. He described petitioner as experiencing "fibromyalgia syndrome" (Ex. 14, pp. 6, 8, 10), a poorly

---

[15]Ex. 4, p. 4, is a copy of the handwritten notes of petitioner's visit to Dr. Wells on January 10, 2000; Ex. 4, p. 5, contains a typed note concerning that same visit, which confirms that petitioner told Dr. Wells that day that *Dr. Kumar* had told petitioner that her joint pain was vaccine-caused.

understood syndrome of unknown cause in which a patient reports pain in various body areas, often around joint areas, but no physical cause for the condition can be found. (For a description of fibromylgia syndrome, see *Johnson v. Secretary of HHS*, No. 92-478, 1995 WL 61536 (Fed. Cl. Spec. Mstr. Jan. 31, 1995), *aff'd*, 33 Fed. Cl. 712 (1995), *aff'd*, 99 F. 3d 1160 (Fed. Cir. 1996).)

Accordingly, after having carefully studied the records of all of petitioner's treating physicians, it seems that, for the most part, those physicians simply never purported to reach a conclusion as to the *cause* of petitioner's chronic joint pain. The only exception is Dr. Kumar, who seems to have reached an explanation for petitioner's chronic pain (*i.e.*, fibromyalgia syndrome) *other* than vaccine-causation. Therefore, contrary to petitioner's suggestion, the records of petitioner's treating physicians do *not* lend any significant support to the theory that petitioner's chronic joint pain was vaccine-caused.

VIII

SUMMARY RE "CAUSATION-IN-FACT" ISSUE

In short, I have carefully reviewed both the above-described evidence that I have taken concerning the *general* "rubella/arthropathy" causation issue, and the complete record of *this* case. After that review, I conclude that petitioner has *failed* to demonstrate that her case meets the "causation criteria" set forth in my "2002 Analysis."[16] Therefore, petitioner has failed to demonstrate "causation-in-fact" by that possible avenue of proof. I also conclude that when I consider *all* of the record before me in this case, in which petitioner has *not* offered a case-specific expert opinion, the evidence simply does *not* preponderate in favor of a conclusion that petitioner's rubella vaccination "more probably than not" caused her chronic joint pain.

IX

"TABLE INJURY" ISSUE

As noted above, petitioner's alternative claim, raised briefly in her reply memorandum filed on March 30, 2004 (pp. 3-5), is that she suffered the *Table Injury* known as "chronic arthritis." The

[16]In the case of *Moreno v. Secretary of HHS*, No. 95-706V, I concluded, in an unpublished ruling, that Ms. Moreno's chronic arthropathy *was* caused by a rubella vaccination, pursuant to the "causation criteria" that I set forth in my "2002 Analysis." Respondent has sought review of that ruling by a judge of this court, and, in the course of that review, respondent has raised arguments concerning the *general* "rubella/arthropathy" causation issue that, in my view, are somewhat *different* from the arguments that I perceived respondent to raise during the 2001-2002 proceedings concerning the general causation issue. In this case, if I had concluded that petitioner met the "causation criteria," I would then have considered those arguments raised by respondent in *Moreno*. Since I concluded, however, that petitioner's case *failed* to meet the causation criteria, I have not addressed those arguments of respondent. (I note that the *Moreno* case remains on review before a judge of this court.)

Table regulatory language that is applicable to this petition[17] provides that if a person receives a vaccination containing the rubella vaccine, goes on to suffer "chronic arthritis," and experiences the first symptom of that arthritis between seven and 42 days after vaccination, that person will be deemed to have suffered a "Table Injury." The regulation provides the following definition for the "chronic arthritis" Table Injury:

> (6) *Chronic Arthritis*. (i) For purposes of paragraph (a) of this section, chronic arthritis may be found in a person with no history in the 3 years prior to vaccination of arthropathy (joint disease) on the basis of:
>
> (A) Medical documentation, recorded within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred between 7 and 42 days after a rubella vaccination;
>
> (B) Medical documentation (recorded within 3 years after the onset of acute arthritis) of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following vaccination; and
>
> (C) Medical documentation of an antibody response to the rubella virus.
>
> (ii) For purposes of paragraph (A) of this section, the following shall not be considered as chronic arthritis: Musculoskeletal disorders such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polymyositis/dermatomyositis, fibromyalgia, necrotizing vasculitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction), metabolic and endocrine diseases, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reiter's syndrome or blood disorders.

---

[17] In the Vaccine Injury Table as originally enacted (see 42 U.S.C. § 300aa-14(a)), arthritis was *not* listed as a Table Injury for any vaccination. The Table was administratively modified, however, in 1995, adding "chronic arthritis," if incurred under certain specified circumstances, as a "Table Injury" for vaccinations that include the rubella vaccine. *See* 60 Fed. Reg. 7678 (1995). A second administrative revision to the Vaccine Injury Table was then promulgated in 1997, retaining "chronic arthritis" as a Table Injury for rubella vaccinations, while slightly modifying the definition of "chronic arthritis" for Table purposes. *See* 62 Fed. Reg. 7685, 7688 (1997). It is the language of that *second* administrative revision, which is applicable to Program petitions filed after March 24, 1997, that is applicable here and is set forth above.

(iii) Arthralgia (joint pain) or stiffness without joint swelling shall not be viewed as chronic arthritis for purposes of paragraph (a) of this section.

42 C.F.R. § 100.3(b)(6) (1997 edition).

I conclude that petitioner's case does *not* fit within this "chronic arthritis" Table Injury category. There are other possible problems with petitioner's case in this regard,[18] but the ground upon which I rely is that the petitioner's history of joint complaints in 1997, discussed at pp. 12-14, above, means that the petitioner is *not* "a person with no history in the 3 years prior to vaccination of arthropathy (joint disease)." 42 C.F.R. § 100.3(b)(6)(i) (1997 ed.). For that reason, I conclude that petitioner's case does *not* qualify under the "chronic arthritis" Table Injury definition.

X

CONCLUSION

It is, of course, very unfortunate that petitioner suffers from chronic joint pain. She is certainly deserving of great sympathy for that condition. As the above discussion indicates, however,

---

[18]I see two other possible reasons why petitioner's case might fail to meet the Table Injury definition. First, it is not clear whether the medical record of petitioner's *telephonic* report of joint swelling, when petitioner was *never actually seen* by a physician, legally constitutes "medical documentation of objective signs of acute arthritis (joint swelling)." 42 C.F.R. § 100.3(b)(6)(i)(A) (1997 ed.). Second, in petitioner's medical records I find only extremely scant evidence of "medical documentation * * * of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following vaccination." 42 C.F.R. § 100.3(b)(6)(i)(B) (1997 ed.). "Objective signs of arthritis" means that the person suffered actual joint *swelling*, not just pain, and "medical documentation" means that *medical personnel* actually observed, or at least recorded the existence of, the joint swelling. Petitioner's medical records, however, indicate that on most occasions when she visited physicians, she *reported* joint *pain*, but her treating physicians did not write in their records that joint *swelling* was actually *observed*. See, *e.g.*, visits of February. 26, 1999 (Ex. 4, p. 14); July 12, 1999 (Ex. 2, p. 3); August 11, 1999 (Ex. 2, p. 8; Ex. 3, pp. 1-2); November 24, 1999 (Ex. 3, p. 3); September 18, 2001 (Ex. 14, p. 6; Ex. 19, p. 2); March 27, 2002 (Ex. 14, p. 8); April 9, 2002 (Ex. 15, p. 11); August 25, 2003 (Ex. 14, p. 12); September 11, 2003 (Ex. 19, p. 2); October 20, 2003 (Ex. 19, p. 1); February 9, 2004 (Ex. 15, p. 26); and April 6, 2004 (Ex. 14, pp. 14-15). In only a few instances did physicians' notations mention slight swelling, "abnormalities," or "thickening" of a finger or knee joint. See visits of January 10, 2000 (Ex. 4, p. 5); May 12, 2000 (Ex. 4, p. 3); July 13, 2001 (Ex. 14, p. 4); and May 22, 2003 (Ex. 14, p. 10). Whether these latter isolated notations constitute evidence of the "persistence" of arthritis, within the Table definition, is not clear.

I need not rule on these two issues, however, since I conclude, as set forth the above, that petitioner's case fails in another respect to meet the Table Injury definition.

I must conclude that petitioner does *not* qualify for a Program award. Absent a timely motion for review of this Decision, the clerk shall enter judgment accordingly.

_____

George L. Hastings, Jr.
Special Master

"RUBELLA OMNIBUS FILE"
TABLE OF CONTENTS
(as updated November 2001)

- Copies of Parts A, B, and D are available for free distribution to any interested party.

- A single copy of Parts C and E, the transcripts, is also in the file. This copy may be inspected at the clerk's office, or the clerk will loan it to a party. Or, a copy of either of these transcripts may be purchased from the Heritage Reporting Service.