In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. [Redacted]V
November 2, 2007
To be Published

JOHN DOE/07,	*	
	*	
Petitioner,	*	
v.	*	Hepatitis B vaccination followed
	*	weeks later by thigh numbness;
SECRETARY OF THE DEPARTMENT	*	optic neuritis 11 weeks after
OF HEALTH AND HUMAN SERVICES,	*	another hepatitis B vaccination;
	*	MS diagnosed two years later
Respondent.	*	

Clifford J. Shoemaker, Vienna, VA, for petitioner.
Nathaniel J. McGovern, Washington, DC, for respondent.

MILLMAN, Special Master

RULING ON ENTITLEMENT[1]

Petitioner filed a petition on July 16, 1999, under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., alleging that hepatitis B vaccinations administered on February 6, 1997, March 11, 1997, and April 9, 1997 caused him unspecified injury.

[1] Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access. Petitioner so moved and the Ruling on Entitlement is redacted.

On July 28, 2006, petitioner filed an amended petition alleging hepatitis B vaccination on March 11, 1997, April 9, 1997, and August 8, 1997 caused him to develop optic neuritis and multiple sclerosis (MS)..

Two and one-half months after his third hepatitis B vaccination, petitioner was diagnosed with optic neuritis. Two years later, petitioner was diagnosed with relapsing multiple sclerosis (MS).

A hearing was held in New York City on September 24, 2007. Testifying for petitioner were petitioner, Dr. Yehuda Shoenfeld (an immunologist), and Dr. Brian Apatoff (petitioner's treating neurologist). Testifying for respondent was Dr. Arthur Safran, a neurologist.

FACTS

Petitioner was born on September 3, 1967.

On February 26, 1997, petitioner requested hepatitis vaccine from his general practitioner, Dr. Albert Levy. Med. recs. at Ex. 5, p. 11.

On March 11, 1997, petitioner received hepatitis B vaccine in his left deltoid. Med. recs. at Ex. 25, p. 1.

On April 9, 1997, he received hepatitis B vaccine in his right deltoid. Med. recs. at Ex. 5, p. 12, and Ex. 25, p. 1.

On April 18, 1997, petitioner returned to Dr. Levy, complaining of a swollen lymph node. He also had a severe burn from a cigar on his right forearm that occurred April 12, 1997. P. Ex. 5, p. 12.

On August 8, 1997, he received hepatitis B vaccine in his left deltoid. Med. recs. at Ex. 25, p. 1.

On November 3, 1997, petitioner saw Dr. Thomas A. Poole, complaining of diminished vision on the left for 10 days associated with pain on ocular motions. Med. recs. at Ex. 5, p. 26. Petitioner denied prior neurologic symptoms. Dr. Poole wrote petitioner's findings were consistent with mild optic/retrobulbar neuritis. *Id.*

On November 4, 1997, petitioner went to see Dr. Mark J. Kupersmith, Chief of the Division of Neuro-Ophthalmology at New York Eye and Ear Infirmary, for a neuro-ophthalmic evaluation. Med. recs. at Ex. 2, p. 1. Petitioner's onset of a veil-type haze under his left eye occurred 11 days previously (or October 24, 1997, two and one-half months after his third hepatitis B vaccination). This was associated with some left temporal pain and some pain in eye movement, but only in the left eye. The pain was gone, but petitioner said his vision was still hazy. He had no preceding illness. He had no other common neurologic complaints. Petitioner had an immediate MRI scan which was negative (the MRI was to check whether petitioner had demyelinating disease). On examination, the left eye was normal except for slight fullness in the disc. Neurological examination showed normal movement, strength, and reflexes. *Id.* His risk of developing MS within five years was 18%. Med. recs. at Ex. 2, p. 2.

Also on November 4, 1997, petitioner had a brain MRI which showed several small foci of T2 signal abnormality along the inferior aspect of the corpus callosum to the left of midline, most consistent with a demyelinating process. Med. recs. at Ex. 9, p. 1. (Why Dr. Kupersmith wrote in his record that the MRI was negative is unknown to the undersigned.)

On June 16, 1998, petitioner saw Dr. Aaron Miller, a neurologist, and gave a history that in about January, he had numbness around the side of his right knee and partially up the thigh for

about one week with recovery except that it acted up when he was nervous. Med. recs at Ex. 7, p. 19.

On June 23, 1998, petitioner had an MRI of his brain with and without contrast which showed areas of increased signal intensity in the left occipital lobe, subcortical area, and left centrum semiovale lateral to the body of the left lateral ventricle in the periventricular area without enhancement after IV gadolinium. Med. recs. at Ex. 7, p. 21.

On March 19, 1999, a brain MRI with and without IV gadolinium was normal except for mucosal enhancement consistent with chronic sinusitis. Med. recs. at Ex. 7, p. 24.

On April 16, 1999, petitioner saw Dr. Brian Apatoff, a neurologist, giving him a history of receiving hepatitis B vaccine in 1997 followed by right thigh numbness. Med. recs. at Ex. 6, p. 19.

On August 16, 1999, petitioner reported occasional paresthesias. His brain MRI was now diagnostic and he had probable relapsing MS. Med. recs. at Ex. 6, pp. 16, 17.

Other Submitted Material

Respondent filed Ex. C on October 23, 2007, an excerpt from Entrapment Neuropathies, 3d ed., ed. by D.M. Dawson, et al. (1999), pp. 373-76, in which the authors state:

> The symptoms of meralgia paresthetica consist of unpleasant paresthesias in the upper and lateral thigh. In most instances the illness is unilateral. Patients describe a burning, stinging, or tingling sensation in the thigh. ... The entire area supplied by the lateral femoral cutaneous nerve is quite large, but in most instances the area of sensory loss is much smaller than this.

Id. at 374.

TESTIMONY

Petitioner testified first. Tr. at 4. He started having migraine headaches when he was 11 or 12 until he was 15 or 16. Tr. at 6. Afterwards, his migraines occurred every six months. Tr. at 7, 8. On February 26, 1997, he went to Dr. Levy to get hepatitis A vaccine because he was going on vacation to Miami and then to Mexico and he was concerned about the cleanliness of restaurants. Tr. at 9. Instead, on March 11, 1997, he received hepatitis B vaccine. Tr. at 11. He received the second hepatitis B vaccination on April 9, 1997. Tr. at 13. He had a swollen lymph node under his right armpit afterwards, the same side on which he had been vaccinated. Tr. at 13, 58-59.

In April, when he was in Miami, he was on the beach lying down and felt a strange sensation on the side of his right thigh going to the top of the thigh. Tr. at 16. When he put his knee up so his thigh was no longer touching the sand, the feeling went away. Tr. at 17. Now he realizes his thigh was numb. Tr. at 18. He experienced this feeling a couple of times when he was in bed. Tr. at 20. He did not tell Dr. Levy about it because he did not think it was anything. Tr. at 22. He does not recall the third hepatitis B vaccination on August 8, 1997. Tr. at 23.

When he attended an accounting class at the end of August 1997, he had a tingling feeling as if a spider were dancing on his temple. Tr. at 24. This feeling continued until September when his optic neuritis was diagnosed. Tr. at 26. He did not tell Dr. Levy about it because he did not think it was serious. Tr. at 51. The numbness in his leg continues until today and got worse. Tr. at 27. His optic neuritis began on October 24, 1997. Tr. at 29, 30. Dr. Apatoff is his neurologist. Tr. at 31. He told Dr. Aaron Miller in 1998 that in January, he had numbness around the side of his right knee and partially up the thigh for about one week when

he recovered. Tr. at 54. Petitioner remembered he had an exacerbation of his symptoms in December 1997 when he had an argument with his father. Tr. at 58.

Dr. Yehuda Shoenfeld, an immunologist, testified next for petitioner. Tr. at 59. His specialty is internal medicine. Tr. at 60. He is the head of the department of medicine and head of the Center of Autoimmune Diseases at Hadassah Medical School in Jerusalem. *Id.* He has written over 1,350 papers in peer-reviewed journals. Tr. at 60-61. He is editor of the textbook "Autoantibodies" and has written "The Mosaic of Autoimmunity." Tr. at 61. He wrote the chapter on vaccines and autoimmunity in the Noel Rose textbook on autoimmunity. *Id.*

Dr. Shoenfeld examined petitioner. Tr. at 62. He believes petitioner's first symptom of MS was his leg numbness caused by his second hepatitis B vaccination due to the timing. *Id.* Dr. Shoenfeld believed that the swelling of petitioner's lymph node was also a reaction of his immune system to a foreign substance happening on the same side on which he was vaccinated. *Id.* (Dr. Shoenfeld believed this was the left side although petitioner testified it was the right side.) This was the original lymph node draining the same side. *Id.* After the second vaccination, petitioner had an anamnestic response to a stimulation of his immune system, which can be expressed either as a lymph node enlargement or generating autoantibodies (self-reacting cells) which is the autoimmune reaction. Tr. at 63. The swelling of the lymph node is a natural reaction to a stimulus on the same side. Tr. at 64.

The numbness of his right thigh was the first sign of MS. Tr. at 67. Petitioner's feeling of a spider on his temple might be the autoimmune reaction and not the foreign body reaction. Tr. at 66. As for timing, one would expect that an autoantibody-mediated phenomenon would appear between two to eight weeks later. Tr. at 68. MS is regarded as an autoantibody-mediated

disease. *Id.* The peripheral nerve symptoms like the tingling and numbness are autoantibody-mediated. Tr. at 68-69.

After petitioner's third hepatitis B vaccination in August 1997, he described a spider-like feeling in his temple which was a precursor to optic neuritis. Tr. at 70. Days to three weeks is the classic immune reaction to a vaccine. Tr. at 75. Typical of MS is a gap of two years between the sign of optic neuritis and the full-blown disease. Tr. at 77.

Nine days after his second hepatitis B vaccination, petitioner had a swollen node enlargement and that is not too soon for causation. Tr. at 78. That was a primary reaction in his system. Tr. at 79. It is probable that there is a connection of the lymph node enlargement and the autoimmune reaction of numbness and tingling. *Id.* There is no question in the medical literature that an infecting agent can cause autoimmune disease. Tr. at 88. Vaccines can also cause autoimmune disease because they contain the ingredients of an infecting agent emulsified in adjuvant which is supposed to stimulate the immune system to react against this ingredient. Tr. at 88-89.

Petitioner has the genetic background that made him susceptible to the effects of the vaccine plus a classic, well-accepted time frame between the vaccine and the onset of symptoms of MS. Tr. at 89. Petitioner had HLA typing done (P. Ex. 17) which shows that he is prone to developing MS. Tr. at 90. He has two types of genetic problem making him susceptible to developing MS. Tr. at 91. In addition, his mother had autoimmune disease (thyroid disease and psoriasis). *Id.* Viruses also cause MS. Tr. at 92. The individual's clinical picture is determined by many factors. Tr. at 94.

Dr. Brian Apatoff, petitioner's treating neurologist, testified next for petitioner. Tr. at 97. He has done postdoctoral research in MS and is on the clinical advisory committee for the National MS Society. He is director of the MS Clinical Care and Research Center and clinical attending at NY-Presbyterian Hospital-Cornell Medical Center. He has also done research in both cellular and molecular immunology in MS and has over 20 years of clinical experience in MS. Tr. at 99. He has received different awards from the National Institutes of Health for his work in MS. Tr. at 100. He became petitioner's neurologist on April 16, 1999. *Id.*

Dr. Apatoff explained that, because of the recognized association of MS with different infections and vaccinations, he takes a very careful medical history about prior viral exposures and vaccinations when he sees a new patient. Tr. at 101. Petitioner told him that he had received hepatitis B vaccine in 1997 prior to the onset of his initial complaint of right thigh numbness. *Id.* There seemed to be a fairly close temporal correlation between the vaccination and the onset of his neurologic symptoms. Tr. at 102.

When asked if he agreed with respondent's neurologic expert Dr. Safran's report that petitioner's right thigh problem was meralgic paresthetica, Dr. Apatoff replied that he disagreed. *Id.* Petitioner complained of numbness or an absence of sensation whereas meralgic paresthetica is typically a dysesthesia or painful sensory phenomenon. *Id.* The area of meralgia paresthetica concerns the irritation of a very small nerve called the lateral femoral cutaneous nerve and is usually a discrete, very circumscribed area of numbness on the thigh whereas petitioner described a broader area of numbness that was more consistent with one or more dermatomes being involved due to inflammation of the spinal cord. *Id.*

Petitioner did not have meralgic paresthetica particularly since he had numbness on and off for many years which then spread to his left leg as well as having other neurologic complaints related to his spinal cord, including bowel and bladder dysfunction, motor complaints with episodic leg weakness, and optic neuritis. Tr. at 103, 113. Meralgic paresthetica usually occurs in older individuals. Tr. at 115. Petitioner has had a fairly typical relapsing course of MS. Tr. at 103. In lesions affecting the spinal cord, there are large sensory patches called dermatomes that extend from the top of one's head to the tip of one's toes. Tr. at 104-05. The larger area of petitioner's thigh indicates that the sensory disturbance related to a dermatome involving a central inflammatory condition as opposed to a peripheral nerve pathology. Tr. at 105. Stress can worsen petitioner's MS. Tr. at 107. Since petitioner has felt the same numbness now in both legs and developed other neurologic problems such as the bowel and bladder dysfunction, Dr. Apatoff makes the unavoidable conclusion that the right thigh numbness was the onset of his current condition. Tr. at 108.

Dr. Apatoff said he can see symptoms evolving weeks or months afterward related to the hepatitis vaccine. Tr. at 110-11. Even though many times, patients do not associate the vaccine with the onset of their symptoms, doctors have a clear understanding that the vaccine can cause dizziness or numbness or any other symptoms the patient might have dismissed or forgotten about. Tr. at 111. It is hard to have a precise time line with neurologic symptoms which are often episodic and fleeting. *Id.* In Dr. Apatoff's clinical experience, he sees many patients, including physicians, who receive hepatitis vaccinations coming in with more dramatic numbness and tingling. Episodes of numbness involving all four limbs have a close correlation with hepatitis vaccine. *Id.* The closer the association in time (petitioner's correlation is a fairly

tight one), the much greater the medical certainty or probability that there is a correlation between the immune stimulation, i.e., the vaccination, and the subsequent neurologic disease. Tr. at 111-12.

Dr. Apatoff said that petitioner's swollen lymph node supports a very robust immune reaction to the vaccine. Tr. at 112. Petitioner's spider-like sensation of his temple was probably correlated to his immune activation. Tr. at 113. That hepatitis B vaccine caused petitioner's MS seems to be the most consistent interpretation medically to Dr. Apatoff. Tr. at 114. It follows logically that the vaccine would cause the effect of the onset of MS. *Id.* Dr. Apatoff is most comfortable drawing a probable association between vaccination and onset when the interval is weeks to months. Tr. at 115.

Respondent's counsel showed Dr. Apatoff an illustration from a medical text which indicated a larger area of involvement for meralgia paresthetica than what Dr. Apatoff said is usually seen. Tr. at 122. Dr. Apatoff stated that burning and stinging are different than numbness which is the absence of sensation. *Id.* He said the picture respondent provided was not typical. Tr. at 124. Meralgia paresthetica is rarely bilateral. Petitioner has both thighs involved with numbness now, which is consistent with MS. Tr. at 126. Meralgia paresthetica is not a relapsing remitting condition. It is monophasic. Tr. at 127. Petitioner has relapsing remitting MS. Even in remission, there can be persistent deficits. *Id.* Petitioner's multifocal numbness in different limbs, both upper and lower extremities, on both sides and on his face is consistent with MS rather than a simple peripheral nerve problem. Tr. at 130.

Someone can have optic neuritis typically two years before he is diagnosed with MS. *Id.* Petitioner's immune pathology subsequent to his swollen lymph node would be the cause of his

MS. The lymph node was a sign of an overactive immune reaction. Tr. at 131. Factoring in petitioner's genetic susceptibility (his major HLA) with the appropriate immune stimulation (hepatitis B vaccine), Dr. Apatoff was not surprised petitioner had the onset of MS. *Id.* Petitioner has a family history of autoimmune disease which made him susceptible to developing autoimmune disease. Tr. at 133.

Dr. Arthur Safran, a neurologist, testified for respondent. Tr. at 134. His practice is limited to MS patients. *Id.* He is semi-retired. Tr. at 135. He is being inducted into the MS Health Professional Hall of Fame by the National MS Society. Tr. at 136. His opinion is that hepatitis B vaccine did not cause petitioner's MS. *Id.* Dr. Safran thinks the onset of petitioner's MS was in late October 1997 when he had visual impairment. Tr. at 137. He does not accept that petitioner had tingling in his right thigh shortly after receiving his second hepatitis B vaccination in April 1997 because that timing is not in the medical records. Tr. at 138. He believes that petitioner's right thigh numbness began in January 1998 based on Dr. Miller's medical notes. *Id.* There is no documentation in the medical records of a swollen lymph node in the right armpit area after the second hepatitis B vaccination. Tr. at 138-39. An 11-week onset interval between vaccination and optic neuritis is not consistent with vaccine causation. Tr. at 139.

Dr. Safran believes that petitioner's right thigh condition in April 1997 is more consistent with meralgia paresthetica than MS. Tr. at 141. He sees meralgia paresthetica more in younger people than in older people. *Id.* The symptoms include numbness, tingling, and pain. It involves a wide area. One can exacerbate the symptoms by touching the area. *Id.* Characteristic of the condition is very long duration. Tr. at 142. Meralgia paresthetica can last a long time. *Id.*

Dr. Safran does not deny petitioner has MS and has numbness in both legs at times. Tr. at 143. He does not recognize that a swollen lymph node is a reaction to vaccination. Tr. at 144. Petitioner's arm burn from a cigar can cause a swollen lymph node. *Id.*

Dr. Safran has published probably eight or ten papers, none of which deals with MS. Tr. at 146. He has written a chapter on MS with co-authors. *Id.* He admitted he is not an expert in autoimmunity. Tr. at 148. As soon as petitioner's right thigh symptoms extended beyond the area enervated by the lateral femoral cutaneous nerve, his meralgia paresthetica ended and petitioner had MS. Tr. at 149.

DISCUSSION

This is a causation in fact case. To satisfy his burden of proving causation in fact, petitioner must offer "(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). In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

> A persuasive medical theory is demonstrated by "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[,]" the logical sequence being supported by "reputable medical or scientific explanation[,]" *i.e.*, "evidence in the form of scientific studies or expert medical testimony[.]"

In Capizzano v. Secretary of HHS, 440 F.3d 1274, 1325 (Fed. Cir. 2006), the Federal Circuit said "we conclude that requiring either epidemiologic studies, rechallenge, the presence of pathological markers or genetic disposition, or general acceptance in the scientific or medical

communities to establish a logical sequence of cause and effect is contrary to what we said in Althen...."

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, supra, at 1149. Mere temporal association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6th Cir. 1983), cert. denied, 469 U.S. 817 (1984).

Petitioner must show not only that but for the vaccine, he would not have had optic neuritis and MS, but also that the vaccine was a substantial factor in bringing about his optic neuritis and MS. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

The Federal Circuit in Capizzano emphasized the opinions of petitioner's four treating doctors in that case that hepatitis B vaccine caused her rheumatoid arthritis. 440 F.3d at 1326.

Close calls are to be resolved in favor of petitioners. Capizzano, 1440 F.3d at 1327; Althen, 418 F.3d at 1280. *See generally*, Knudsen v. Secretary of HHS, 35 F.3d 543, 551 (Fed. Cir. 1994).

In Werderitsh v. Secretary of HHS, No. 99-319V, 2006 WL 1672884 (Fed. Cl. Spec. Mstr. May 26, 2006), the undersigned ruled that hepatitis B vaccine can cause MS and did so in that case. The onset interval after vaccination in Werderitsh was one month. Here, the onset of petitioner's MS is in controversy.

Petitioner's experts pinpoint his onset to the end of April 1997, after his second hepatitis B vaccination on April 9, 1997, when he was at the beach in Florida and experienced right thigh numbness. Petitioner's experts consider petitioner's earlier swollen right axillary lymph node,

for which he saw Dr. Levy on April 18, 1997, as indicative of an overreaction to his second hepatitis B vaccination nine days earlier.

Respondent's expert accepted that petitioner had a right thigh problem in April 1997 but attributed it to a nerve entrapment condition called meralgia paresthetica. He opined that petitioner's onset of MS was his optic neuritis occurring 11 weeks after his third hepatitis B vaccination on August 8, 1997. He accepted petitioner's having right thigh numbness only in January 1998 because of notations in Dr. Aaron Miller's records, and rejected petitioner's assertion that, in December 1997, he had had an exacerbation of his prior thigh numbness.

The medical records unfortunately do not clarify the significance and sometimes the location of areas that the experts focused on at the hearing. That left the undersigned with a judgment call on the credibility of petitioner. The undersigned believes petitioner when he testified that he had right thigh numbness a few weeks after his second hepatitis B vaccination. It is more important that the standard practice of petitioner's treating neurologist, Dr. Apatoff, who testified on his behalf, is to take a history from a new patient by asking if he had an illness or vaccination before the onset of his MS. Dr. Apatoff saw petitioner for the first time in April 1999 and elicited from him that after he received hepatitis B vaccine, he had right thigh numbness. This conforms with petitioner's testimony at the hearing about his right thigh being numb after he received hepatitis B vaccine.

The Federal Circuit emphasized in Capizzano the importance of the special masters' consideration of the treating physicians' opinions. In this case, not only did the treating physician, Dr. Apatoff, take a history that was focused on the relationship of petitioner's vaccination with the onset of his right thigh numbness, but also Dr. Apatoff testified on

petitioner's behalf. Although the undersigned values Dr. Shoenfeld's opinion because of his prodigious output as an immunologist, it was Dr. Apatoff who most impressed the undersigned since his opinion that hepatitis B vaccine caused petitioner's MS arose outside the context of litigation. In addition, Dr. Apatoff is extremely qualified as an expert in MS, having practiced and done research in the MS area for 20 years.

All three experts accept that MS has a genetic component, i.e., someone is born with a susceptibility to develop it. Drs. Shoenfeld and Apatoff also opined that someone who is susceptible to developing MS needs an environmental challenge, a viral infection or a vaccination, to prompt the development of symptoms of MS. This is the biologically plausible medical theory underlying petitioner's MS: hepatitis B vaccine challenged petitioner's immune system in such a way as to work on his susceptibility to developing an autoimmune disease, which, in this case, was MS.

That petitioner would develop right thigh numbness weeks after his second hepatitis B vaccination is consistent with a logical sequence of cause and effect based on the above medical theory. Whether or not his swollen lymph node indicates an overreaction to his vaccination and is thus consistent with his sensitivity to the foreign protein in the vaccine is not essential to the understanding of this case. Dr. Safran attributed the swollen lymph node to the burn on petitioner's arm from a cigar six days before he saw Dr. Levy. Admittedly, the swollen lymph node is a different type of reaction than the neurological one. The undersigned does not find it essential in ruling in this case to determine whether the vaccine reaction, which was after all neurological, was also causative of the lymph node swelling or whether the cigar burn on the

right forearm was the culprit. The focus is appropriately on the first neurologic sign, which is the right thigh numbness.

Since the undersigned holds that the right thigh numbness in April 1997 was the onset of petitioner's MS, the timing of a few weeks after vaccination fits right within the classic autoimmune time table and within the time limits both sides' experts gave in the Omnibus proceeding.

The undersigned does not accept that petitioner's right thigh numbness in April 1997 was due to meralgia paresthetica for all the reasons Dr. Apatoff stated. It makes no sense when examined in hindsight that the first neurologic symptom petitioner had was not the onset of his MS but all the neurologic symptoms following it (optic neuritis, right thigh numbness in December 1997 or January 1998, left thigh numbness, bowel and bladder problems) are due to his MS. Moreover, the literature that respondent filed states that patients with meralgia paresthetica complain of burning and stinging. Petitioner complained of neither. His thigh numbness is episodic whereas meralgia paresthetica is monophasic.

Not only does the onset of petitioner's right thigh numbness weeks after his second hepatitis B vaccination implicate the vaccination to both Drs. Shoenfeld and Apatoff, but also the spider-like feeling in his temple at the end of August weeks after his third hepatitis B vaccination implicates the vaccination again, according to the doctors.

Petitioner has made a prima facie case of causation in fact that hepatitis B vaccination caused his optic neuritis and MS. There may actually be no reason to distinguish the two since the experts accepted that petitioner's optic neuritis, followed by a diagnosis of MS two years later, is typical for patients with relapsing, remitting MS, the type of MS petitioner has.

CONCLUSION

Petitioner has prevailed on the issue of entitlement. The undersigned encourages the parties to settle damages in this case. A telephonic status conference shall be set soon to discuss how to proceed with damages.

IT IS SO ORDERED.

November 2, 2007
DATE

s/Laura D. Millman
Laura D. Millman
Special Master