

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

PATRICIA ANN BARRON,

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No. 10-085V

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Special Master Christian J. Moran

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Petitioner,

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Filed: May 27, 2011

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Influenza vaccine; failure to
prosecute; insufficient proof

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Respondent.

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Patricia A. Barron, Diamond Bar, CA, for petitioner;

Lisa A. Watts, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Patricia Ann Barron filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 *et. seq.*, on February 12, 2010. Her petition alleged that she suffered had an adverse reaction, including severe pain in her left arm, resulting from the receipt of the influenza vaccine administered to her on October 14, 2009. The information in the record, however, does not show entitlement to an award under the Program.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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, a party has 14 days to identify and to move to delete such information before the document's disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

I. Procedural History

On February 12, 2010, Ms. Barron, representing herself, filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 et. seq., alleging that she experienced pain on her left arm caused in fact by an influenza vaccine she received on October 14, 2009. No medical records were filed with her petition as required by 42 U.S.C. § 300aa-11(c).

An initial status conference was held on April 23, 2010. Ms. Barron requested the opportunity to seek the services of an attorney. A follow-up status conference was set for June 10, 2010 and the deadline for respondent's responsive report was suspended.

No action was taken in this case until January 10, 2011. At that time, Ms. Barron was ordered to participate in a status conference set for February 2, 2011 to discuss how she wished to proceed with her case. Attempts to contact Ms. Barron for scheduling this conference were unsuccessful. Ms. Barron did not participate in this conference. An order, dated February 3, 2011, directed Ms. Barron to file a status report by March 7, 2011, updating the court on how she wished to proceed with her case. She did not comply. Thus, on March 31, 2011, Ms. Barron was ordered to show cause as to why her case should not be dismissed by May 16, 2011. Ms. Barron did not respond.

II. Analysis

When a petitioner (or plaintiff) fails to comply with Court orders to prosecute her cases, the Court may dismiss the case. Sapharas v. Sec'y of Health & Human Servs., 35 Fed. Cl. 503 (1996); Tsekouras v. Sec'y of Health & Human Servs., 26 Cl. Ct. 439 (1992), aff'd, 991 F.2d 819 (Fed. Cir. 1993) (table); Vaccine Rule 21(c); see also Claude E. Atkins Enters., Inc. v. United States, 889 F.2d 1180, 1183 (Fed. Cir. 1990) (affirming dismissal of case for failure to prosecute for counsel's failure to submit pre-trial memorandum); Adkins v. United States, 816 F.2d 1580, 1583 (Fed. Cir. 1987) (affirming dismissal of case for failure of party to respond to discovery requests).

Additionally, to receive compensation under the National Vaccine Injury Compensation Program (hereinafter "the Program"), a petitioner must prove either 1) that she suffered a "Table Injury" – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that she suffered an injury that was actually caused by a vaccine. See §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the record did not uncover any evidence that Ms. Barron suffered a "Table Injury." Further, the record does not contain a medical expert's opinion or any other persuasive evidence indicating that Ms. Barron's alleged injury was vaccine-caused.

Under the Act, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. § 300aa-13(a)(1). In this case, because the medical records do not support petitioners' claim, a medical opinion must be offered in support. Petitioners, however, have offered no such opinion. Accordingly, it is clear from the record in this case that Ms. Barron has failed to demonstrate either that she suffered a "Table Injury" or that her injuries were "actually caused" by a vaccination.

Thus, this case is dismissed for failure to prosecute and for insufficient proof. The Clerk shall enter judgment accordingly.

The Clerk's Office is instructed to mail a courtesy copy of this order to Ms. Barron return receipt requested.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

Christian J. Moran
Special Master