

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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PAMELA MYERS,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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No. 11-49V

Special Master Christian J. Moran

Filed: April 18, 2012

Decision on the record; insufficient  
proof of causation; facial paralysis;  
trivalent influenza vaccine.

Marc P. Picker, Reno, NV, for petitioner;

Lara A. Englund, United States Dep't of Justice, Washington, D.C., for respondent.

### **UNPUBLISHED DECISION DENYING COMPENSATION<sup>1</sup>**

Pamela Myers filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300a-10 *et. seq.*, on January 18, 2011. Her petition alleged that she had an adverse reaction, including facial paralysis, resulting from the receipt of the trivalent influenza vaccine administered to her on October 10, 2008. The information in the record, however, does not show entitlement to an award under the Program.

#### **I. Procedural History**

An initial status conference was held on February 11, 2011. During this conference, the deadline for respondent's Rule 4 report was suspended, and Ms. Myers was ordered to continue collecting her medical records. On February 17, 2011, Ms. Myers filed her medical records, as required by 42 U.S.C. § 300aa-11(c) and Vaccine Rule 2(c)(2)(A). A status conference was then held on March 30, 2011, during which

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<sup>1</sup> The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this ruling on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Ms. Myers was ordered to continue collecting records and to file a status report regarding her progress by May 30, 2011.

Ms. Myers did file this status report on May 28, 2011, and indicated that she had obtained all of the “pertinent medical records for this matter.” She filed these remaining records two days later.

On July 27, 2011, respondent filed a status report regarding the completeness of the records. After her review, respondent requested that Ms. Myers file additional records, as well as complete copies of the original records filed. Respondent stated that without these records, she would be unable to evaluate Ms. Myers’ claim for compensation.

Ms. Myers filed these records on August 9, 2011, and filed her statement of completion on August 26, 2011. However, after another review, respondent indicated that some records were incomplete. Nevertheless, respondent requested that she file her responsive report by November 25, 2011.

Ms. Myers refiled her records on October 24, 2011. Following these submissions, respondent submitted her report pursuant to Vaccine Rule 4. In this report, respondent suggested that there is likely another cause for Ms. Myers’ condition. Respondent states that Ms. Myers’ symptoms are consistent with a herpes zoster infection. Respondent recommended that compensation be denied. See Resp’t Rep’t at 10-11.

A status conference was held on November 29, 2011. In this conference, Ms. Myers was ordered to file a status report by January 17, 2012, proposing a suggested next step for this case. Ms. Myers did file this report, which stated that she had been in discussions with potential expert witnesses; however, an expert had not yet been retained. Ms. Myers requested an additional 45 days to continue her search for an expert. This request was granted.

On March 12, 2012, Ms. Myers filed another status report, again reporting that she had not retained an expert, and requesting a final extension until April 16, 2012 to determine a next step for her case. This request was granted.

Ms. Myers filed a status report on April 16, 2012, indicating that she had been unable to obtain an expert witness and requesting a ruling on the record. In informal communications with respondent, respondent indicated that she would not file a response and will rest on her Rule 4 report. Accordingly, this case is now ready for adjudication.

## **II. Analysis**

To receive compensation under the National Vaccine Injury Compensation Program (hereinafter “the Program”), petitioner must prove either 1) that Ms. Myers suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to her vaccination, 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. Myers suffered a “Table Injury.” Thus, she is necessarily pursuing a causation-in-fact claim.

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 Ms. Myers’ claim, a medical opinion must be offered in support. Ms. Myers, however, has offered no such opinion.

Accordingly, it is clear from the record in this case that Ms. Myers 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 insufficient proof. The Clerk shall enter judgment accordingly.**

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

IT IS SO ORDERED.

S/Christian J. Moran  
Christian J. Moran  
Special Master