

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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JAMES H. PERRODIN,

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Petitioner,

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No. 99-573V

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Special Master Christian J. Moran

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v.

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Filed: May 1, 2007

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Hepatitis B; entitlement; tingling, rash,

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vision trouble, mental health problems,

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Respondent.

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joint pain; ruling on the record

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Altom Maglio, Maglio, Christopher & Toale, Sarasota, Florida for petitioner
Robin Brodrick, United States Dep't of Justice, Washington, D.C. for respondent

PUBLISHED DECISION<sup>1</sup>

On August 4, 1999, James Perrodin filed a petition seeking compensation pursuant to the National Vaccine Injury Compensation Program ("the Program"). 42 U.S.C. §§ 300aa-1 et seq. Mr. Perrodin alleged that the hepatitis B vaccine, which he received in three doses in 1994 and 1995, caused him to suffer an "adverse reaction." Petition ("Pet.") at ¶ 2 (second). Documents submitted later appear to clarify his reaction and provide evidence that Mr. Perrodin suffers from trouble with his vision, pain in his joints, and pain in his muscles. Exhibit 31 (affidavit of Mr. Perrodin, dated April 25, 2006).

On April 12, 2007, Mr. Perrodin filed a Motion for a Ruling on the Record. This motion is GRANTED. The Court finds that the information on the record does not show entitlement to an award under the Program. Petitioner's claim for compensation is hereby DENIED.

1 Because this published 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).

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 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 banned categories listed above, the special master shall delete such material from public access.

## I. FACTS

Mr. Perrodin was born in 1945. Exhibit 30 ¶ 4. By the time he was a teenager, he was affected with amblyopia in his left eye. See exhibit 11 at 2 (stating amblyopia started when he was 12); exhibit 4 at 6 (stating amblyopia started when he was 6). Amblyopia is an “impairment of vision without detectable organic lesion of the eye.” DORLAND’S ILLUSTRATED MEDICAL DICTIONARY (30<sup>th</sup> ed. 2003) at 57.

Mr. Perrodin served in this country’s armed forces in Vietnam. When he separated from the military in 1968, a medical examination indicated that he was still experiencing problems with his vision. Exhibit 6 at 3-4.

In 1994, Mr. Perrodin decided to attend nursing school. While he was a nursing student, he received a vaccination against hepatitis B in three doses. Exhibit 13 at 10; exhibit 23. The dates of his vaccinations were August 2, 1994; September 6, 1994; and January 31, 1995. Exhibit 10 at 1.

According to an affidavit signed in 2004, Mr. Perrodin began to have a rash on his face after he received the third dose of the hepatitis B vaccine in 1995. Exhibit 30 ¶ 7. The amount of time between the January 31, 1995 vaccination and the first appearance of this rash is not stated in the affidavit.

There are no medical records from January 1995 until October 1995, for any condition. In regards to his rash, Mr. Perrodin eventually sought treatment from a dermatologist in July 1999. In giving his history to the doctor, Mr. Perrodin stated that his rash had been present for four years, but he was seeking medical attention for the first time. Exhibit 19 at 2.

In providing medical histories to other doctors, Mr. Perrodin gave slightly different dates for the beginning of his rash. For example, in a history Mr. Perrodin provided in 2002, he said that the rash began in February 1995. Exhibit 40 at 45. Although the date of the onset of the rash is undetermined, more precise fact-finding is not necessary. As discussed in more detail below, no evidence suggests that the hepatitis B vaccine caused the rash.

In addition to the rash, Mr. Perrodin’s affidavit also states that after he received the third dose of the hepatitis B vaccine, he experienced problems with his vision. Exhibit 30 ¶ 7. The records indicate that Mr. Perrodin started experiencing double vision in October 1995. Exhibit 18. Doctors labeled Mr. Perrodin’s condition with two different terms: “macular edema” and “age related macular degeneration.” Exhibit 40 at 35-36; exhibit 7 at 6. (Mr. Perrodin provided no information about whether these conditions are related to each other.) Regardless of terminology, none of the treating ophthalmologists associated Mr. Perrodin’s vision trouble with the hepatitis B vaccine. See id.

In July 1998, Mr. Perrodin reported to a VA hospital because he was having pain in his neck. A radiologic exam indicated that he had degenerative joint disease in his cervical spine. Exhibit 4 at 27-29.

On May 26, 1998, Mr. Perrodin saw Dr. Andrew Campbell for the first time. Exhibit 40 at 72-77; exhibit 41 at 7.<sup>2</sup> Dr. Campbell describes himself as a specialist in clinical immunotoxicity. Exhibit 41 at 8. He has diagnosed patients as having a reaction to a vaccine more than a hundred times. Exhibit 41 at 27.

For Mr. Perrodin's first visit to Dr. Campbell, he supplied a copy of some of his recent medical records. Mr. Perrodin's wife also completed a questionnaire about his health history. Exhibit 40 at 78-86. Mr. Perrodin indicated on Dr. Campbell's checklist that he was experiencing a variety of problems, including depression, anxiety, personality changes, mood swings, vision trouble, numb or tingling feeling, ringing in his ears, severe muscle pain, rashes, hair loss, cold hands and feet, low back pain, neck pain, and knee pain. Id.

Based upon the information presented at the first meeting and Dr. Campbell's experience, Dr. Campbell diagnosed Mr. Perrodin as having an adverse reaction to the hepatitis B vaccine. Exhibit 40 at 72; exhibit 41 at 13. Dr. Campbell ordered some tests. However, Dr. Campbell did not need the results of these tests to offer a diagnosis. Exhibit 41 at 51.

After a few follow up visits, Dr. Campbell recommended that Mr. Perrodin receive intravenous immunoglobulin ("IVIG"). Exhibit 40 at 8. IVIG is used to treat primary immunodeficiency disorders. The IVIG therapy lasted about six weeks. Exhibit 21 at 33, 43.

In November 1998, Dr. Campbell wrote a general "to whom it may concern" letter in which Dr. Campbell stated that Mr. Perrodin suffered from "chronic inflammatory demyelinating polyneuropathy." Exhibit 40 at 11. Dr. Campbell attempted to explain during his deposition that he was using each of these four terms singularly. He was not diagnosing Mr. Perrodin with the condition called "chronic inflammatory demyelinating polyradiculoneuropathy" or CIDP, which is a diagnosis sometimes made by neurologists. Exhibit 41 at 35, 42. Dr. Campbell's testimony about the distinction between what he wrote in his letter and what a neurologist would understand was, at best, confusing.

Dr. Campbell's diagnosis that Mr. Perrodin suffered from demyelination depended, at least in part, on the result of a particular type of neurologic test. Dr. Campbell also considered that Mr. Perrodin's pupils reacted to light slowly and his deep tendons had different reflexes. Exhibit 41 at 57.

Although Dr. Campbell believed that Mr. Perrodin was experiencing a problem with his nerves, Dr. Campbell did not refer Mr. Perrodin to a neurologist. Exhibit 41 at 60-61. Dr. Campbell believed that a neurologist could not assist Mr. Perrodin because most neurologists do not

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<sup>2</sup> Exhibit 41 is the transcript of a deposition of Dr. Campbell. The parties requested that this Court authorize them to issue a subpoena to compel Dr. Campbell to testify at a deposition in this case. The deposition allowed the parties to explore the basis for Dr. Campbell's diagnosis that Mr. Perrodin experienced an adverse reaction to the hepatitis B vaccine. Order, dated November 13, 2006.

know how to treat patients who are exposed to toxins. *Id.* Dr. Campbell also did not order an electromyography (“EMG”). *Id.* at 58. An EMG is “an electrodiagnostic technique for recording the extracellular activity (action potentials and evoked potentials) of skeletal muscles at rest, during voluntary contractions, and during electrical stimulation.” DORLAND’S, above, at 598. Dr. Campbell believed that an EMG would not have assisted Mr. Perrodin because an EMG detects problems with the nerves that stimulate muscles and Mr. Perrodin was having a problem with his sensory nerves. Exhibit 41 at 58-59.

Mr. Perrodin was treated by Dr. Campbell until February 8, 1999. Exhibit 40 at 47; exhibit 41 at 60. On that date, Mr. Perrodin reported that he was experiencing joint pain, especially at his hips, knees, elbows, and shoulders. Exhibit 40 at 48. Mr. Perrodin, however, did not consent to Dr. Campbell’s plan for treatment and stopped treating with Dr. Campbell. Exhibit 40 at 45, 47.

In the next month, Mr. Perrodin saw Dr. Richard Rubin, a rheumatologist. It appears that Mr. Perrodin replaced Dr. Campbell with Dr. Rubin as a primary physician. Exhibit 40 at 45. In a history about Mr. Perrodin’s condition, Dr. Rubin recounts that Dr. Campbell diagnosed Mr. Perrodin as having chronic inflammatory demyelinating polyneuropathy and a reaction to the hepatitis B vaccine. Exhibit 17 at 7-8. Dr. Rubin ordered tests and also referred Mr. Perrodin to a neurologist.

Mr. Perrodin saw the neurologist, Dr. Tetsuo Ashizawa, on March 16, 1999. After obtaining a history of Mr. Perrodin’s problems, Dr. Ashizawa ordered various tests. These tests included an EMG, which produced a normal result. Exhibit 11 at 6-7. Consequently, Dr. Ashizawa reported back to Dr. Rubin that he disagreed with the diagnosis of CIDP. *Id.* at 4.

On July 15, 1999, Mr. Perrodin saw Dr. Jon Stern, a dermatologist, for the rash on his face. According to the information Mr. Perrodin provided to Dr. Stern, Mr. Perrodin was seeking medical attention for his rash for the first time. The rash, however, started four years earlier. Dr. Stern diagnosed this condition as “inflammatory seb derm.” Exhibit 19 at 2. “Seb derm” is probably an abbreviation for “seborrheic dermatitis.” *See* exhibit 17 at 3 (Dr. Rubin report referring to “seborrhea”). Seborrheic dermatitis is a condition which causes excessive secretion of sebum related to the skin. DORLAND’S, above, at 1673. Dr. Stern did not mention the hepatitis B vaccine in his evaluation.

After 1999, Mr. Perrodin was seen by Dr. Rubin periodically. The most recent report is from a visit in 2004. Exhibit 37 at 1. Dr. Rubin’s records do not indicate whether the hepatitis B vaccine caused Mr. Perrodin’s rheumatological problems.

## **II. PROCEDURAL POSTURE**

Mr. Perrodin filed his petition *pro se* on August 4, 1999. He did not file any medical records at that time. The petition also did not specifically identify the condition, illness, or injury for which Mr. Perrodin was seeking compensation. Rather, the petition incorporated medical records and affidavits that had not yet been filed. Pet. ¶ 3.

About two months later, an attorney entered an appearance to represent Mr. Perrodin. Between January 2000 and July 2002, Mr. Perrodin's attorney filed five status reports. With one exception, these status reports were not specific to this case. Instead, they generally explained that counsel was attempting to collect medical records and that petitioner's counsel and respondent's counsel were attempting to develop a procedure to allow the numerous cases alleging injury following hepatitis B vaccinations to be resolved easily.

For various reasons, the case progressed slowly for five years. In February 2001, Mr. Perrodin filed a collection of his medical records, labeled as exhibits 1-23. More than three years passed without any new substantive submissions in this case. In June 2004, Mr. Perrodin filed another set of medical records as exhibits 24-29. About two more years passed. In 2006, the case was transferred to the undersigned special master.

In April 2006, Mr. Perrodin filed additional medical records, along with an affidavit, which describes his problems as of the date it was signed, August 5, 2004. Exhibit 30. This affidavit defines the scope of Mr. Perrodin's claims because he did not file an amended petition. On May 30, 2006, a motion was granted allowing Mr. Perrodin's current counsel to become counsel of record.

Respondent filed its report, pursuant to Vaccine Rule 4, on June 26, 2006. In that report, respondent denied that Mr. Perrodin was entitled to compensation and noted that Mr. Perrodin had failed to submit an expert report. Resp't Rep't at 10. Pursuant to an order dated March 29, 2006, Mr. Perrodin was required to file an expert report by July 26, 2006.

Mr. Perrodin did not file an expert report by this date. Instead, Mr. Perrodin requested, and received, additional time. Eventually, Mr. Perrodin sought authorization to issue a subpoena to Dr. Andrew Campbell, who treated Mr. Perrodin and stated that Mr. Perrodin suffered from an adverse reaction to the hepatitis B vaccine. Mr. Perrodin's request, which respondent did not oppose, was granted. Order, dated November 13, 2006.

The parties cooperated with Dr. Campbell to schedule his deposition at a mutually convenient time, which turned out to be February 20, 2007. Exhibit 41. Portions of Dr. Campbell's deposition are cited in the preceding section, which sets forth the facts in this case, and in the following section, which presents the conclusions.

After Dr. Campbell's deposition, Mr. Perrodin determined that he did not wish to proceed with his case. He, therefore, filed a motion for a ruling on the record, which was a single sentence

in length.<sup>3</sup> Respondent submitted its response, and Mr. Perrodin stated that he did not intend to file a reply. Thus, the case is now ripe for a decision.

### III. ANALYSIS

#### A. Whether A Judgment On The Record Is Appropriate

Mr. Perrodin has requested a ruling based upon the record in this case. In this motion, Mr. Perrodin offers no argument that he is entitled to compensation. Pet'r Mot., filed April 12, 2007. The records are sufficiently developed that a decision may be made as to whether Mr. Perrodin is entitled to a Program award. See 42 U.S. C. § 300aa-12(d)(3)(B)(v); Vaccine Rule 8(b). Thus, Mr. Perrodin's motion for judgment on the record is GRANTED.

#### B. Whether Petitioner Is Entitled To Compensation

##### 1. Standards For Adjudication

To receive compensation under the Program, Mr. Perrodin must prove either: (1) that he suffered a "Table Injury"--*i.e.*, an injury falling within the Vaccine Injury Table – corresponding to one of his vaccinations, or (2) that he suffered an injury that was actually caused by a vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1); Capizzano v. Sec'y of Health and Human Servs., 440 F.3d 1317, 1320 (Fed. Cir. 2006). Here, Mr. Perrodin does not claim that he suffered a table injury. Thus, he must prove causation in fact.

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. 42 U.S.C. § 300aa-13(a)(1). In determining whether a petitioner is entitled to

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<sup>3</sup> Mr. Perrodin has not sought to withdraw his case voluntarily. Presumably, Mr. Perrodin has not taken this step, which would appear to be a more simple way for a petitioner to concede a case, to preserve his right to file a lawsuit in an appropriate state court.

Before a lawsuit regarding an injury caused by a vaccine administrator or manufacturer may be filed in state court, a petitioner must obtain a "judgment" from this Court. 42 U.S.C. § 300aa-21(a). "Judgments" follow "decisions" by special masters. 42 U.S.C. §§ 300aa-12(d) and § 12(e). "Decisions" of special masters, in turn, include "findings of fact and conclusions of law." 42 U.S.C. §§ 300aa-12(d)(3)(A). Mr. Perrodin's pending motion will eventually produce a judgment.

In contrast, a voluntary withdrawal of an action causes the Court not to issue a "judgment." Robinson v. Sec'y of Health & Human Servs., No. 04-041V, 2004 WL 2677197 (Fed. Cl. Spec. Mstr. Nov. 3, 2004); Hamilton v. v. Sec'y of Health & Human Servs., No. 02-838V, 2003 WL 23218074 (Fed. Cl. Spec. Mstr. Nov. 26, 2003).

Thus, a voluntarily withdrawal prevents Mr. Perrodin from maintaining a lawsuit against a vaccine administer or manufacturer. To obtain the necessary judgment, Mr. Perrodin must follow the procedure he has taken.

compensation, the special master shall consider all material contained in the record. 42 U.S.C. § 300aa-13(b)(1). This universe necessarily includes “any . . . conclusion, [or] medical judgment. . . which is contained in the record regarding . . . causation . . . of the petitioner’s illness.” 42 U.S.C. § 300aa-13(b)(1)(A).

To prove causation in fact, a petitioner must establish at least three elements. The petitioner’s

burden is to show by preponderant evidence that the vaccination brought about [the] injury by providing: (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. Sec’y of Health and Human Servs., 418 F.3d 1274, 1278 (Fed. Cir. 2005). Proof of medical certainty is not required; a preponderance of the evidence suffices. Bunting v. Sec’y of Health and Human Servs., 931 F.2d 867, 873 (Fed. Cir. 1991).

Mr. Perrodin could have set forth in his petition the injuries for which he seeks compensation with more clarity. Nevertheless, his affidavit lists several problems, which can be assumed to be the injuries for which he seeks compensation. See exhibit 30. He lists (1) a prickling sensation in his fingertips, (2) a severe rash on his face, (3) vision problems, (4) mental health problems including memory loss and panic attacks, and (5) joint and muscle pain. The above-stated standards for adjudication will be used in determining whether Mr. Perrodin is entitled to compensation for any condition.

## 2. Prickling Sensation

Mr. Perrodin describes a prickling sensation. Exhibit 30 ¶ 6. It is assumed that this problem matches to the chronic polyneuropathy diagnosed by Dr. Campbell because they both involve sensory nerves.

It is here that Mr. Perrodin makes his strongest case. Yet, even for this claim, Mr. Perrodin falls well short of establishing the elements necessary for compensation.

For this condition, Mr. Perrodin submitted the records of Dr. Campbell and also deposed him to obtain his testimony. Dr. Campbell opines that Mr. Perrodin suffered from an adverse reaction to the hepatitis B vaccine. Exhibit 40 at 71. Dr. Campbell also describes Mr. Perrodin as suffering from a neuropathy in which Mr. Perrodin suffered from both too much feeling and too little feeling. Exhibit 41 at 17.

As a treating doctor, Dr. Campbell’s diagnosis is entitled to some weight. 42 U.S.C. § 300aa-13(b)(1)(A); Capizzano v. Sec’y of Health & Human Servs., 440 F.3d 1317, 1326 (Fed.

Cir. 2006). However, even granting Dr. Campbell deference due to his role as a treating doctor, his reports do not meet Mr. Perrodin's burden.

The records do not support a judgment in favor of Mr. Perrodin because he has failed to establish any of the three prongs required by Althen. Mr. Perrodin's absence of proof is most readily apparent with regard to the third prong – "proximate temporal relationship between vaccination and injury."

In May 1998, Mr. Perrodin informed Dr. Campbell that he had been experiencing numbness or tingling feeling for two years (or since May of 1996). Exhibit 40 at 78. Mr. Perrodin received his third and last dose of the hepatitis B vaccine on January 31, 1995. Exhibit 10. Thus, the interval between the vaccination and the onset of tingling appears to about 15 months, at its shortest.<sup>4</sup>

Dr. Campbell does not address how a series of vaccinations can cause a problem that appears for the first time more than one year later. As the petitioner, Mr. Perrodin bears the burden of submitting this information. He has not done so. Moreover, a period of 15 months exceeds the amount of time typically recognized by experts retained by petitioners as appropriate for a causal relationship between a vaccine and an injury. See Hodges v. Sec'y of Health & Human Servs., 9 F.3d 958, 961 (Fed. Cir. 1993) (recognizing that special masters adjudicate cases based upon their "accumulated expertise").

Mr. Perrodin failed to submit any evidence concerning the appropriate temporal relationship between the vaccination and the onset of his signs and symptoms. This lack of evidence, by itself, indicates that he has failed to establish one of the factors required by Althen. The Federal Circuit has stressed the importance of the temporal relationship by stating "without some evidence of temporal linkage, the vaccination might receive blame for events that occur weeks, months, or years outside of the time in which scientific or epidemiological evidence would expect an onset of harm." Pafford v. Sec'y of Health & Human Servs., 451 F.3d 1352, 1358 (Fed. Cir. 2006), rehearing and rehearing en banc denied, No. 05-5106, 2006 U.S. App. Lexis 28907 (Fed. Cir. Oct. 24, 2006), petition for cert. filed, 75 U.S.L.W. 3403 (U.S. Jan. 22, 2007) (No. 06-1047). Having the symptoms follow the vaccination is not sufficient to establish an appropriate temporal sequence. Abbott v. Sec'y of Health and Human Servs., 27 Fed. Cl. 792 (1993); Fricano v. Sec'y of Health and Human Servs., 22 Cl. Ct. 796, 800 (1991).

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<sup>4</sup> Between January 1995 (the date of the last vaccination) and May 1996 (the approximate date the tingling began), no medical records indicate that Mr. Perrodin was having problems with tingling or numbness. The absence of treatment is more notable because as a veteran, Mr. Perrodin visited medical facilities associated with the Veterans' Administration during this time for other problems.

Resolving the apparent conflict between Mr. Perrodin's claim of tingling and his inaction about seeking treatment is not necessary. Even if Mr. Perrodin did start to experience tingling in approximately May 1996, his claim fails for the reasons in the text.

While a finding that Mr. Perrodin failed to meet his burden of proof regarding the third Althen factor suffices as a basis for a judgment against him, for the sake of completeness, the first two Althen factors are analyzed below. For each of these factors, Mr. Perrodin has also failed to meet his burden of proof.

By medical records or by medical opinion, Mr. Perrodin has failed to establish the first prong of Althen – “a medical theory causally connecting the vaccination and the injury.” As mentioned, he presented material from Dr. Campbell, including a “to whom it may concern” letter. This letter said that Mr. Perrodin “suffers from chronic inflammatory demyelinating polyneuropathy.” Exhibit 40 at 11.

Dr. Campbell’s statement is problematic. During his deposition, Dr. Campbell appears to have backed away from this conclusion and stated that Mr. Perrodin did not meet the criteria for “chronic inflammatory demyelinating polyneuropathy” as that term is used by neurologists. Exhibit 41 at 35. However, his explanation was so confusing that his diagnosis appeared disingenuous. Moreover, Dr. Ashizawa, who is both a neurologist and a treating doctor, explicitly rejected the diagnosis of a polyneuropathy. Exhibit 11 at 4. Thus, Dr. Campbell’s diagnosis carries less weight because it is contradicted by the opinion of another treating doctor who is a specialist in the relevant field.<sup>5</sup>

Viewed in the light most favorable to Mr. Perrodin, Dr. Campbell stated that the hepatitis B vaccine caused Mr. Perrodin’s polyneuropathy. However, Dr. Campbell’s statements do not satisfy Mr. Perrodin’s burden of proof. Dr. Campbell does not express a “medical theory.” Rather, these statements are conclusions that lack a theory explaining how the hepatitis B vaccine caused Mr. Perrodin’s condition. Although he was questioned during his deposition about how he could diagnose Mr. Perrodin as having a reaction to the hepatitis B vaccine during Mr. Perrodin’s first visit and without waiting for the results of certain lab work he ordered, Dr. Campbell did not provide a satisfactory answer. Exhibit 41 at 13-14, 21 (noting Dr. Campbell reviewed Mr. Perrodin’s medical records after the first visit), 51-53. Without any reasoning explaining how Dr. Campbell came to his conclusion, assessing the accuracy of his statement is very difficult, if not impossible. See Perreira v. Sec’y of Health & Human Servs., 33 F.3d 1375, 1377 n.6 (Fed. Cir. 1994) (“An expert opinion is no better than the soundness of the reasons supporting it.”). Therefore, Dr. Campbell’s statements are not persuasive.

Furthermore, Mr. Perrodin has failed to establish the second prong of Althen – a logical sequence of cause and effect. Again, because he did not present an expert opinion, the evidence must be found in the medical records. The medical records, including Dr. Campbell’s report, do not present a sequence of cause and effect. Essentially the same deficiencies identified with the first

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<sup>5</sup> Respondent raises the point that Dr. Campbell failed to administer an electromyogram. Resp’t Res. at 3. However, to his credit, Dr. Campbell explained that an electromyogram would not provide useful information because of the type of nerve allegedly impaired. Exhibit 41 at 58. To establish that an EMG would have been useful, respondent was required to present evidence, such as medical literature or a statement from a doctor, not merely argument.

Althen prong are present here. Any statement alleging a causal connection between the hepatitis B vaccination and Mr. Perrodin's nerve problems is conclusory and does not consist of a sequence of cause and effect.

In short, in regards to his claim of "tingling," Mr. Perrodin has failed to meet his burden of proving any of the factors required by Althen. Thus, compensation may not be awarded to him.

### 3. Rash

For three related reasons, Mr. Perrodin has also failed to meet his burden of proving that the hepatitis B vaccine caused a rash on his face. The primary problem is that no doctor, not even Dr. Campbell, associated Mr. Perrodin's rash with the hepatitis B vaccine. Mr. Perrodin is required to submit the report of a doctor, either a treating doctor or one retained in the litigation, to establish causation. 42 U.S.C. § 300aa-13(a)(1). Mr. Perrodin has not done so.

In addition, when Mr. Perrodin sought treatment from a dermatologist, Dr. Stern, more than four years after the vaccinations, Dr. Stern linked the rash to inflammatory seborrheic dermatitis, not the hepatitis B vaccine. Exhibit 19 at 2. No evidence suggests that the hepatitis B vaccine caused the seborrheic dermatitis.

Finally, the record contains contradictory information about when the rash began. In 1999, Mr. Perrodin informed a doctor that his rash started in 1967 when he was in the Air Force. Exhibit 11 at 2. However, an examination performed when he separated from the military in 1968 indicates that his face was normal and did not note any rash. Exhibit 6 at 3-4. On the other hand, other records show that Mr. Perrodin stated in 1999 and 2000 that the rash began in 1995. Exhibit 19 at 2; exhibit 40 at 45. The lack of any records from 1995 about the rash further complicates resolving this issue. Resolving the inconsistency in the records is not necessary because even if the rash began in 1995, Mr. Perrodin's claim would still fail for lack of proof as explained in the preceding two paragraphs. Therefore, for all these reasons, his claim for compensation for a rash is denied.

### 4. Vision Problems

Mr. Perrodin has also failed to meet his burden of proving that the hepatitis B vaccine caused his vision problems. Here again, the primary problem is that no doctor associated Mr. Perrodin's vision trouble with the hepatitis B vaccine. This lack of evidence is more glaring because Mr. Perrodin's treating ophthalmologists thought the root of his decline in visual acuity was age-related macular degeneration. Exhibit 7 at 6. When a treating doctor indicates that the cause of a problem is something other than a vaccine, a petitioner must submit some evidence to show that the vaccine was a cause. 42 U.S.C. § 300aa-13(a)(1). Mr. Perrodin has not done so. Therefore, his claim for compensation for vision problems is denied.

5. Mental Health Problems

In his affidavit, Mr. Perrodin lists various mental problems such as anxiety, depression, and panic attacks. Regardless of the specific problem, Mr. Perrodin has failed to prove that he is entitled to compensation.

There are two problems with this claim. First, no contemporaneously created medical record indicates when Mr. Perrodin's anxiety, depression, or panic attacks began. In May 1998, Mr. Perrodin informed Dr. Campbell via Dr. Campbell's checklist that he was having these problems for three years, or since May 1995. However, Mr. Perrodin apparently did not seek treatment. See, above, note 4. Without knowing when the problems began, there is no basis for concluding that there is a temporal relationship between the vaccination and these problems.

Second, and more significantly, no doctor linked any mental problem with the hepatitis B vaccine. As previously stated, Mr. Perrodin has the burden of presenting this evidence. His failure to do so means that his claim for compensation must be denied.

6. Joint and Muscle Pain

The last condition for which Mr. Perrodin seeks compensation is for joint and muscle pain. Information in the record suggests that Mr. Perrodin's joint and muscle pain began in May 1996. Exhibit 40 at 79. In March 1999, Mr. Perrodin began seeing Dr. Rubin, a rheumatologist, for these problems. See exhibit 17 at 7-8.

Much like the other claims for compensation, this claim suffers from several deficiencies. First, there is no contemporaneously created medical record showing that his problem began in May 1996. Second, even if the problem began in May 1996, at least fifteen months had passed from the date of his last vaccination on January 31, 1995. The temporal relationship seems remote. Third, on July 28, 1997, Mr. Perrodin was diagnosed as having degenerative joint disease in his cervical spine. Exhibit 4 at 27-29. Mr. Perrodin has offered no evidence linking degenerative joint disease to the hepatitis B vaccine. These points all militate against awarding compensation.

However, there is very slight evidence in favor of compensation. Dr. Rubin noted that Dr. Campbell said that Mr. Perrodin suffered from an adverse reaction to the hepatitis B vaccine. Exhibit 17 at 7-8. Dr. Rubin, himself, did not make this diagnosis and appears to be repeating what Dr. Campbell said.

Dr. Rubin's repetition of Dr. Campbell's diagnosis does not increase its persuasiveness. For the reasons given above, Dr. Campbell's statement that Mr. Perrodin suffered an adverse reaction to the hepatitis B vaccine is not reliable. Consequently, no probative evidence supports Mr. Perrodin's claim for compensation for his joint and muscle pain.

**IV. CONCLUSION**

For these reasons, petitioner's claim for compensation is hereby DENIED. In the absence of a motion for review, the Clerk of the Court shall enter judgment in favor of respondent.

IT IS SO ORDERED.

S/ Christian J. Moran

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Christian J. Moran  
Special Master