

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

JENNIFER TROMETTA, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND HUMAN SERVICES, *

Respondent. *

No. 12-414V
Special Master Christian J. Moran

Filed: March 7, 2013

Ruling on the record, Tdap,
reflex sympathetic dystrophy

Mark T. Sadaka, Englewood, NJ, for petitioner;
Jennifer L. Reynaud, United States Dep't of Justice, Washington, D.C., for respondent.

UNPUBLISHED DECISION DENYING COMPENSATION¹

Jennifer Trombetta filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300a-10 *et. seq.* (the "Vaccine Act" or "Program"), on June 26, 2012. Her petition alleged that a dose of a vaccine known as Adacel² caused her to develop reflex sympathetic dystrophy. The information in the record, however, does not show entitlement to an award under the Program.

I. Procedural History

After Ms. Trombetta submitted her petition, she filed a set of medical records (exhibits 1-13). She also filed an affidavit (exhibit 14). During an initial status

¹ 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.

² Adacel is the brand name for a vaccine containing tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis components. Dorland's Illustrated Medical Dictionary 25 (32d ed.)

conference held on August 2, 2012, Ms. Trombetta was ordered to file additional medical records.

Ms. Trombetta never filed additional medical records. Rather, on October 18, 2012, she filed a motion for a decision based on the record. The Secretary filed a response on January 7, 2013. Accordingly, this case is now ready for adjudication.

II. Analysis

To receive compensation under the Program, Ms. Trombetta must prove either 1) that she 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). Although certain injuries are associated with components of Adacel, reflex sympathetic dystrophy is not one of those associated conditions. Thus, Ms. Trombetta 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. Trombetta’s claim, a medical opinion must be offered in support. Ms. Trombetta, however, has offered no such opinion.

Ms. Trombetta’s motion for ruling on the record contains many assertions of counsel. However, counsel’s statements are not a substitute for evidence. See Williams v. Social Sec. Admin, 586 F.3d 1365, 1368 (Fed. Cir. 2009); Gilda Industries, Inc. v. United States, 446 F.3d 1271, 1281 (Fed. Cir. 2006).

Accordingly, it is clear from the record in this case that Ms. Trombetta 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, Tucker McCarthy, at (202) 357-6392.

IT IS SO ORDERED.

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