IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

* *		
W.C.,	*	No. 07-456V
	*	Special Master Christian J. Moran
Petitioner,	*	
	*	
v.	*	Filed: March 16, 2011
	*	Released: September 26, 2011
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	Motion to redact medical condition
	*	
Respondent.	*	
	*	
* *		

Ronald C. Homer and Meredith Daniels, Conway, Homer & Chin-Caplan, P.C., Boston, MA., for petitioner;
Debra A. Filteau Begley, United States Dep't of Justice, Washington, D.C., for respondent.

ORDER DENYING MOTION FOR REDACTION[1]

[1] When this order was originally issued, the parties were notified that the decision would be posted in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). The parties were also notified that they could seek redaction pursuant to 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b). Petitioners made a timely request for redaction but this request was denied. The public release of this order was delayed while the petitioner sought review.

The Court of Federal Claims reversed the March 16, 2011 order, ordered redaction of the petitioner's name to initials, and permitted petitioner to seek additional redactions. W.C. v. Sec'y of Health & Human Servs., No. 07-456V, 2011 WL 3439131 (Fed. Cl. July 22, 2011). Petitioner's additional requests for redaction were largely (but not entirely) granted. Thus, this order is being released with the name of the petitioner redacted to initials. Additional redacted information is noted by [***].

W.C. filed a petition seeking compensation for an injury that he alleged was caused by a vaccine. As required by 42 U.S.C. § 300aa—12(b)(2), the filing of W.C.'s petition was noted in the Federal Register. 73 Fed. Reg. 54834, 54837 (Sept. 23, 2008). A February 22, 2011 decision found that W.C. was not entitled to compensation and, in the course of explaining the basis for this finding, the decision described W.C.'s medical condition. On March 3, 2011, W.C. filed a motion requesting redaction of his medical condition pursuant to 42 U.S.C. § 300aa—12(d)(4)(B) and Vaccine Rule 18(b). For the reasons that follow, this motion is denied.

The background and legal standards for redacting a decision are set forth in Langland v. Sec'y of Health & Human Servs., No. 07-36V, 2011 WL 802695 (Fed. Cl. Spec. Mstr. Feb. 3, 2011). Langland reviewed the common law history of access to judicial decisions. 2011 WL 802695, at *7-9. This history includes the Supreme Court's recognition that there is "a general right to inspect and copy public records and documents, including judicial records and documents." Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978).

Langland considered this background in interpreting the Vaccine Act, which requires the disclosure of a "decision of a special master or the court" with two exceptions. The exception pertinent here is when

> the decision is to include information
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> * * *
>
> (ii) which are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.

42 U.S.C. § 300aa-- 12(d)(4)(B).

The analysis of W.C.'s request begins with the acknowledgment that the February 22, 2011 decision contains information about W.C.'s medical history that W.C. may reasonably prefer to be kept from public access. This simple showing, by itself, is not sufficient to warrant redaction. As pointed out in Langland, all decisions of special masters discuss medical conditions. Nevertheless, Congress ordered the presumptive disclosure of those decisions. These two facts combine to indicate that Congress "clearly contemplated that medical information would be disclosed as well." 2011 WL 802695, at *6. Thus, "a clearly unwarranted invasion of privacy," must be based upon more than a disclosure of petitioner's name and medical condition.

Here, W.C. argues that his case fits the special circumstances warranting redaction. W.C. contends that any disclosure of the disease affecting him would constitute an "unwarranted invasion of privacy" because of the nature of his work ***. As part of his employment, W.C. has ***. W.C. maintains that the public release of his name in conjunction with his disease would ***. According to W.C., ***. Exhibit 34 (W.C.'s affidavit in support of motion to redact).[2] Thus, W.C. requests that the public not have access to his medical condition.

In a case discussing the public's right to access judicial files, the Ninth Circuit distinguished between two types of disclosures. Public access may be denied when disclosing the information would serve "to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." In contrast, the public's right to access information is not defeated when the disclosure of information "may lead to a litigant's embarrassment, incrimination, or exposure to further litigation." Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006).

Nothing suggests that the disclosure of W.C.'s medical condition would be for spite, would advance a public scandal, or would repeat a libelous statement. Thus, W.C.'s does not fall within the group of cases for which the public's access to the judicial decision is traditionally denied. Instead, W.C.'s argument – which is essentially that *** – amounts to an attempt to avoid embarrassment or future litigation. This showing is not sufficient under Kamakana.[3]

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[2] W.C. made essentially the same argument during a March 14, 2011 status conference at which he and his attorney appeared telephonically.

[3] Kamakura affirmed a magistrate judge's decision to allow the public (as represented by a newspaper) to access the vast majority of the court file of a case in which a police officer asserted that he was retaliated against for his whistleblowing activities. In arguing against public access, the defendant (the city of Honolulu) contended that allowing public access would hinder the activities of the police department, "endanger informants' lives, and cast [Honolulu Police Department] officers in a false light." Kamabura, 447 F.3d at 1182. The magistrate judge and the Ninth Circuit rejected these arguments.

W.C.'s claim for denial of public access is actually weaker than the arguments unsuccessfully advanced in Kamakura. W.C. has not argued that public access to his medical condition would place anyone's life in jeopardy.

W.C.'s argument focuses ***. But, in emphasizing ***. Kamakana, 447 F.3d at 1178-79, quoting Hagestad v. Tagesser, 49 F.3d 1430, 1434 (9th Cir. 1995) (further citation omitted).

Consequently, W.C. has not met his burden of demonstrating that including his medical condition in the publicly available decision would constitute an unwarranted invasion of privacy. His March 3, 2011 motion for redaction is denied.

Similarly, W.C.'s alternative motion, which was filed on March 8, 2011, to replace his name with "John Doe" is also denied. This alternative motion was premised on the assertion that W.C.'s medical condition should be redacted. However, as explained above, W.C.'s medical condition may be included in the decision available to the public. W.C. presented no separate reason to be granted anonymity.[4] Therefore, the March 8, 2011 motion is also denied.

CONCLUSION

W.C. has requested redaction of the medical condition that he claimed was caused by the flu vaccine. This request is denied because W.C. has not satisfied the standard for redacting information from a special master's decision.

IT IS SO ORDERED.

s/ Christian J. Moran
Christian J. Moran
Special Master

Additionally, the disclosure of W.C.'s medical condition would not present him in a "false light."

[4] Although the decision not to publish W.C.'s case as a "John Doe" case is not consistent with some previous decisions, those decisions do not establish a binding precedent that cannot be reexamined. See Langland, 2011 WL 80265, at *11 (discussing past practices).