

OFFICE OF SPECIAL MASTERS

No. 05-1196V

November 29, 2005

Not for Publication

In re the Marriage of: *
KEVIN WAYNE STEAD, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *

Respondent. *

Kevin Wayne Stead, Essex Junction, VT, pro se.
Linda S. Renzi, Washington, DC, for respondent.

Millman, Special Master

DECISION¹

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 move to delete such information prior to 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.

Petitioner filed a petition pro se dated November 10, 2005, under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-10 et seq., alleging that five anthrax vaccinations on various dates caused him numerous medical conditions.

On November 21, 2005, respondent moved to dismiss on the ground that the Vaccine Act, particularly, the list of vaccines for which inoculation(s) a petitioner may bring a petition (see 42 C.F.R. § 100.3(a)) does not include anthrax vaccine. Therefore, the undersigned does not have subject matter jurisdiction over this petition.

Respondent is correct and the undersigned must dismiss this petition with prejudice.

DISCUSSION

The United States is sovereign and no one may sue it without the sovereign's waiver of immunity. United States v. Sherwood, 312 U.S. 584, 586 (1941). When Congress waives sovereign immunity, courts strictly construe that waiver. Library of Congress v. Shaw, 478 U.S. 310 (1986); Edgar v. Secretary of HHS, 29 Fed. Cl. 339, 345 (1993); McGowan v. Secretary of HHS, 31 Fed. Cl. 734, 740 (1994); Patton v. Secretary of HHS, 28 Fed. Cl. 532, 535 (1993); Jessup v. Secretary of HHS, 26 Cl. Ct. 350, 352-53 (1992) (implied expansion of waiver of sovereign immunity was beyond the authority of the court). A court may not expand on the waiver of sovereign immunity explicitly stated in the statute. Broughton Lumber Co. v. Yeutter, 939 F.2d 1547, 1550 (Fed. Cir. 1991).

One of these limitations to suit is the listing of the vaccines on the Vaccine Injury table, as most recently listed in section 100.3(a) of the Code of Federal Regulations (part 42). Anthrax vaccine is not listed among the vaccines for which vaccinees may bring suit in this Program. See Finely v. Secretary of HHS, No. 04-974V, 2004 WL 2059490 (Fed. Cl. Spec. Mstr. Aug. 24,

2004) (polysaccharide pneumococcal vaccine not on the Vaccine Table); Charette v. Secretary of HHS, 33 Fed. Cl. 488, 493 (1995) (typhoid vaccine not on the Vaccine Table). The undersigned does not have subject matter jurisdiction over this petition and must dismiss it.

Because the undersigned has no subject matter jurisdiction over this petition, petitioner may not receive compensation for costs he expended in filing it. Martin v. Secretary of HHS, 62 F.3d 1403 (Fed. Cir. 1995).

CONCLUSION

This petition is dismissed with prejudice. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance herewith.

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master