

OFFICE OF SPECIAL MASTERS

No. 99-601V

June 8, 2006

JAMES YOUNGBLOOD, *

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Petitioner, *

*

v. *

Time intervals between vaccinations and transverse myelitis medically appropriate for vaccine injury; rechallenge of same symptoms of numbness leading to TM; treating doctors ascribe causation to vaccine; R must show cause why P shall not prevail and case go into damages

SECRETARY OF THE DEPARTMENT OF *

HEALTH AND HUMAN SERVICES, *

*

Respondent. *

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ORDER TO SHOW CAUSE¹

Petitioner filed a petition on August 4, 1999 under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq., on his own behalf, ultimately alleging that his first and second

¹ Because this order to show cause contains a reasoned explanation for the special master's action in this case, the special master intends to post this order to show cause 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.

hepatitis B vaccinations administered on July 9, 1991 and August 8, 1991, respectively, 1996 caused him transverse myelitis (TM). This case was suspended with over 60 other cases while the hepatitis B vaccine-demyelinating diseases Omnibus proceeding was concluded. The undersigned has recently concluded those proceedings, ruling that hepatitis B vaccine can cause TM, GBS, CIDP, and MS. In Stevens v. Secretary of HHS, No. 99-594V, 2006 WL 659525 (Fed. Cl. Spec. Mstr. Feb. 24, 2006), the undersigned ruled that hepatitis B vaccine caused petitioner's TM in a positive rechallenge case. The instant action is a positive rechallenge case.

The undersigned ORDERS respondent to SHOW CAUSE why petitioner shall not prevail by July 20, 2006 and this case go into damages.

FACTS

Petitioner was born on May 27, 1951. He received his first hepatitis B vaccination on July 9, 1991. Two weeks later, he had numbness of his feet. He received his second hepatitis B vaccination on August 8, 1991. Three weeks later, he had numbness of his lower extremities and torso, eventually leading to a diagnosis of post-vaccinal TM in his discharge diagnosis from the hospital on September 15, 1991. Med. recs. at Ex. 14, p. 100. Dr. Michael Lombard, in a record dated October 7, 1991, states Mr. Youngblood's TM was probably related to his immunization. Med. recs. at Ex. 17, p. 423. Dr. Ferhan Beken, in a record dated March 2, 1998, states that Mr. Youngblood's TM is most likely secondary to hepatitis B vaccination. Med. recs. at Ex. 22, p. 60. Dr. Terry D. Heiman Patterson, in a record dated September 2, 1999, states that Mr. Youngblood's TM is secondary to hepatitis B vaccine. Med. recs. at Ex. 17, p. 301.

DISCUSSION

This is a causation in fact case. To satisfy his burden of proving causation in fact, petitioner must offer "(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. Secretary of HHS, 418 F. 3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Secretary of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[.]" the logical sequence being supported by "reputable medical or scientific explanation[.]" *i.e.*, "evidence in the form of scientific studies or expert medical testimony[.]"

In Capizzano v. Secretary of HHS, 440 F.3d 1274, 1325 (Fed. Cir. 2006), the Federal Circuit said "we conclude that requiring either epidemiologic studies, rechallenge, the presence of pathological markers or genetic disposition, or general acceptance in the scientific or medical communities to establish a logical sequence of cause and effect is contrary to what we said in Althen..."

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, *supra*, at 1149. Mere temporal association is not sufficient to prove causation in fact. Hasler v. US, 718 F.2d 202, 205 (6th Cir. 1983), *cert. denied*, 469 U.S. 817 (1984).

Petitioner must show not only that but for the vaccine, he would not have had TM, but also that the vaccine was a substantial factor in bringing about his TM. Shyface v. Secretary of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

One of the three Althen criteria petitioner must satisfy is a that there was a medically-appropriate temporal relationship between his vaccinations and illness. The undersigned has already described in Stevens that a few weeks is the appropriate temporal relationship between vaccination and TM. Moreover, this is a positive rechallenge case (as was Stevens) in that Mr. Youngblood experienced the same symptom (numbness in his feet) after each vaccination, but his symptoms worsened into TM after the second vaccination. The Federal Circuit in Capizzano, supra, at 1326, emphasized the opinions of petitioner's four treating doctors in that case that hepatitis B vaccine caused petitioner's rheumatoid arthritis. Here, at least four of Mr. Youngblood's doctors diagnosed him with TM secondary to hepatitis B vaccine..

Respondent is ORDERED TO SHOW CAUSE why petitioner should not prevail in this case by July 20, 2006 and this case go into damages.

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master