

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

JANET LEGER,

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Petitioner,

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No. 08-831V

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Special Master Christian J. Moran

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

Filed: May 21, 2010

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Respondent.

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Ruling on the record; trivalent
influenza (flu) vaccine; Ménière’s
Disease.

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UNPUBLISHED DECISION¹

On November 17, 2008, Ms. Leger filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). Ms. Leger filed an amended petition on September 22, 2009, alleging that the trivalent influenza (flu) vaccine that she received on December 7, 2005, caused her to suffer from Ménière’s Disease. The information in the record, however, does not show entitlement to an award under the Program.

To receive compensation under the Program, a petitioner must prove either: 1) she suffered a “Table Injury” - i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of her medical problems were actually caused by the vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the filed medical records, however, did not uncover any evidence that Ms. Leger suffered a “Table Injury.” Furthermore, the records do not contain a medical expert’s opinion indicating that any of Ms. Leger’s problems were related to the vaccine in question.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

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, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Under the statute, 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 the medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioner's claims, a medical opinion must be offered in support. Petitioner, however, offered no such opinion.

In a motion filed on April 23, 2010, petitioner requested a ruling dismissing her petition, and acknowledging that petitioner "has been unable to secure an expert report and will therefore be unable to prove that she is entitled to compensation." The court hereby grants petitioner's motion for ruling on the record and makes its decision based on the written filings. Vaccine Rule 8(d).

Under the law, compensation may only be awarded when a medical condition either falls within one of the "Table Injury" categories, or is shown by competent medical opinion to be vaccine-caused. No such proof exists in the record. Accordingly, it is clear from the record that Ms. Leger has failed to demonstrate either that she suffered a "Table Injury" or that her condition was "actually caused" by a vaccination.

Therefore, the only alternative remains is to DENY this petition. In the absence of a motion for review, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master