

**OFFICE OF SPECIAL MASTERS**

(Filed: October 25, 2005)

DR. FRANKLIN A. KATZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 04-1258V
	)	DO NOT PUBLISH
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

**DECISION<sup>1</sup>**

Petitioner, Franklin A. Katz, M.D. (Dr. Katz), seeks compensation under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> Dr. Katz filed his petition on August 6, 2004. He claims that he suffers a “peripheral neuropathy” that is related to a Hepatitis B vaccination that he received on August 14, 2001. Petition (Pet.) at 1.

Respondent denies that Dr. Katz is entitled to Program compensation. *See generally* Respondent’s Report (Report), filed December 1, 2004. At the outset, respondent asserts that Dr. Katz’s medical “diagnosis remains unclear.” Report at 14; *see also* Report at 15. Regardless, respondent maintains that Dr. Katz has not proffered an appropriate medical opinion evincing “a reputable medical or scientific explanation” regarding the relationship between his August 14, 2001 Hepatitis B vaccination and his condition. Report at 14, citing *Grant v. Secretary of HHS*, 956 F.2d 1144, 1150 (Fed. Cir. 1992).

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<sup>1</sup> As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire decision” will be available to the public. *Id.*

<sup>2</sup> The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

The special master reviewed thoroughly the petition. He convened an informal, yet substantive, status conference on October 17, 2005. He expressed that he agrees fundamentally with respondent's assessment of the petition reflected in the Report.

Dr. Katz moves now for a decision on the record. *See* Petitioner's Memorandum (P. Memo), filed October 21, 2005. He represents that he is "unable to locate an expert to submit a report." P. Memo at 1. He concedes that any decision on the record "cannot be favorable." *Id.*

Congress prohibited special masters from awarding compensation "based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion." § 300aa-13(a). Numerous cases construe § 300aa-13(a). The cases reason uniformly that "special masters are not medical doctors, and, therefore, cannot make medical conclusions or opinions based upon facts alone." *Raley v. Secretary of HHS*, No. 91-0732V, 1998 WL 681467, at \*9 (Fed. Cl. Spec. Mstr. Aug. 31, 1998); *see also Camery v. Secretary of HHS*, 42 Fed. Cl. 381, 389 (1998).

The special master has canvassed completely the record. He determines that Dr. Katz's medical records alone do not reflect an independent basis for him to conclude more likely than not that Dr. Katz's August 14, 2001 Hepatitis B vaccination caused actually Dr. Katz's condition. Thus, Dr. Katz requires necessarily a medical expert's opinion to establish his claim. However, Dr. Katz acknowledges that he cannot obtain a medical expert's opinion that supports the petition. *See* P. Memo at 1. As a consequence, the special master is constrained to conclude that Dr. Katz is not entitled to Program compensation.

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing the petition.

The clerk of court shall send Dr. Katz's copy of this decision to Dr. Katz by overnight express delivery.

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John F. Edwards  
Special Master