

OFFICE OF SPECIAL MASTERS

(Filed: July 27, 2005)

BRUCE STEARNS,)	
)	
Petitioner,)	
)	
v.)	No. 04-1082V
)	DO NOT PUBLISH
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION¹

Petitioner, Bruce Stearns (Mr. Stearns) seeks compensation under the National Vaccine Injury Compensation Program (Program).² In a petition that he filed on June 30, 2004, Mr. Stearns alleges that he “suffered the ‘Table Injury’ known as brachial neuritis” after he received a diphtheria-tetanus (DT) vaccination on July 30, 2003. Petition (Pet.) at 1. Mr. Stearns claims that he “continues to experience pain and numbness” from the brachial neuritis. Pet. ¶ 9.

In a July 11, 2005 order to show cause, the special master reviewed comprehensively the bases for a decision dismissing Mr. Stearns’s petition. *See Stearns v. Secretary of HHS*, No. 04-1082V, Order to Show Cause (Fed. Cl. Spec. Mstr. July 11, 2005). The special master stated that Mr. Stearns is not entitled to the presumption of causation afforded by § 300aa-11(c)(1)(C)(I) and by § 300aa-13(a)(1)(A). *See Stearns v. Secretary of HHS*, No. 04-1082V, Order to Show Cause at 8 (Fed. Cl. Spec. Mstr. July 11, 2005). Citing 42 C.F.R. § 100.3(b)(7)(ii) (“[E]lectromyographic

¹ 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.*

² 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.

studies must be consistent in confirming that dysfunction is attributable to the brachial plexus.”) and Petitioner’s exhibit (Pet. ex.) 4 at 7 (“[T]he E[lectro]M[yo]G[raph] did not confirm the presence of brachial neuritis.”), the special master explained carefully that Mr. Stearns’s medical records “refute *absolutely*” that Mr. Stearns sustained an injury comporting with the regulatory definition of brachial neuritis contained in the qualifications and aids to interpretation that apply to the Vaccine Injury Table (Table) that governs Mr. Stearns’s claim. *Stearns v. Secretary of HHS*, No. 04-1082V, Order to Show Cause at 8 (Fed. Cl. Spec. Mstr. July 11, 2005) (emphasis in original). The special master stated also that the opinion that Mr. Stearns proffered from his treating physician, David L. Webster, M.D. (Dr. Webster), a neurologist associated with the Minneapolis Clinic of Neurology, Ltd., see Pet. ex. 5, was “woefully insufficient” when measured against the actual causation standard in Program cases. *Stearns v. Secretary of HHS*, No. 04-1082V, Order to Show Cause at 8 (Fed. Cl. Spec. Mstr. July 11, 2005). Citing *Knudsen v. Secretary of HHS*, 35 F.3d 543, 548-49 (Fed. Cir. 1994), the special master explained carefully that “Dr. Webster does not articulate a medical theory that is ‘logical’ and ‘probable,’ given ‘the circumstances of the particular case.’” *Stearns v. Secretary of HHS*, No. 04-1082V, Order to Show Cause at 8 (Fed. Cl. Spec. Mstr. July 11, 2005). Indeed, the special master found that Dr. Webster “proposes no theory at all.” *Id.*

The special master expressed his firm view that he had provided Mr. Stearns “a full, fair opportunity to” present his case by directing Mr. Stearns in several orders to “supplement Dr. Webster’s opinion.” *Stearns v. Secretary of HHS*, No. 04-1082V, Order to Show Cause at 9 (Fed. Cl. Spec. Mstr. July 11, 2005). The special master noted that Mr. Stearns conceded that he “‘is unable to provide’ anything further from Dr. Webster.” *Id.*, citing Petitioner’s Status Report, filed July 1, 2005, at 1. The special master “distinguished easily” the case from *Dickerson v. Secretary of HHS*, 35 Fed. Cl. 593 (1996), because the special master had “issued several orders requiring Mr. Stearns to submit from Dr. Webster a supplemental affidavit that contained his “‘full underlying analysis.’” *Stearns v. Secretary of HHS*, No. 04-1082V, Order to Show Cause at 9 (Fed. Cl. Spec. Mstr. July 11, 2005), citing *Dickerson*, 35 Fed. Cl. at 602. Therefore, the special master commanded Mr. Stearns to show cause by no later than July 20, 2005, why the special master should not dismiss the petition. See *Stearns v. Secretary of HHS*, No. 04-1082V, Order to Show Cause at 9 (Fed. Cl. Spec. Mstr. July 11, 2005). By reference, the special master incorporates his July 11, 2005 order to show cause into this decision.

As of the date of this decision, Mr. Stearns has not responded to the special master’s July 11, 2005 order to show cause.³ The special master has canvassed again the record as a whole. The special master is exceedingly sympathetic to Mr. Stearn’s circumstances. However, the special master is constrained to determine based upon the record before him that Mr. Stearns is not entitled to Program compensation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment dismissing the petition.

³ See Vaccine Rule 8(f). (“Any fact or argument not raised specifically in the record before the special master shall be considered waived and cannot be raised by either party in proceedings on review of a special master’s decision.”)

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

John F. Edwards
Special Master