OFFICE OF SPECIAL MASTERS

No. 02-579V

(Filed: October 12, 2005)

DONNA ANNETTE KEAN,	*	
Petitioner,	*	
v.	*	**NOT TO BE PUBLISHED**
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	**To be posted on court's website[1]**
Respondent.	*	

RULING CONCERNING "ENTITLEMENT" ISSUE

HASTINGS, ***Special Master.***

This is an action in which the petitioner seeks an award under the National Vaccine Injury Compensation Program (hereinafter "the Program--see 42 U.S.C. § 300aa-10 *et seq*.[2]). For the reasons set forth below, I conclude that she is entitled to such an award, in an amount yet to be determined.

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[1]Because this document contains a reasoned explanation for my action in this case, I intend to post this document on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, 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, this entire document will be available to the public. *Id*.

[2]The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa-10 *et seq*. (2000 ed.). Hereinafter, for ease of citation, all "§" references will be to 42 U.S.C. (2000 ed.). I will also sometimes refer to the Act of Congress that created the Program as the "Vaccine Act."

I

THE APPLICABLE STATUTORY SCHEME AND CASE LAW

Under the National Vaccine Injury Compensation Program (hereinafter the "Program"), compensation awards are made to individuals who have suffered injuries after receiving vaccines. In general, to gain an award, a petitioner must make a number of factual demonstrations, including showings that an individual received a vaccination covered by the statute; received it in the United States; suffered a serious long-lasting injury; and has received no previous award or settlement on account of the injury. Finally--and the key question in most cases under the Program--the petitioner must also establish a causal link between the vaccination and the injury. In some cases, the petitioner may simply demonstrate the occurrence of what has been called a "Table Injury." That is, it may be shown that the vaccine recipient suffered an injury of the type enumerated in the "Vaccine Injury Table" corresponding to the vaccination in question, within an applicable time period also specified in the Table.[3] If so, the Table Injury is presumed to have been caused by the vaccination, and the petitioner is automatically entitled to compensation, unless it is shown affirmatively that the injury was caused by some factor other than the vaccination. § 300aa-13(a)(1)(A); § 300aa-11(c)(1)(C)(i); § 300aa-14(a); § 300aa-13(a)(1)(B).

In other cases, however, the vaccine recipient may have suffered an injury not of the type covered in the Vaccine Injury Table. In such instances, an alternative means exists of demonstrating entitlement to a Program award. That is, the petitioner may gain an award by showing that the recipient's injury was "caused-in-fact" by the vaccination in question. § 300aa-13(a)(1)(A); § 300aa-11(c)(1)(C)(ii). In such a situation, of course, the presumptions available under the Vaccine Injury Table are inoperative. The burden is on the petitioner to introduce evidence demonstrating that, in fact, the vaccination caused the injury in question. *Hines v. Secretary of HHS*, 940 F. 2d 1518, 1525 (Fed. Cir. 1991); *Althen v. Secretary of HHS*, 418 F. 3d 1274, 1278 (Fed. Cir. 2005). The showing of "causation-in-fact" must satisfy the "preponderance of the evidence" standard, the same standard ordinarily used in tort litigation. § 300aa-13(a)(1)(A); *see also Hines*, 940 F. 2d at 1525; *Althen*, 418 F. 3d at 1278. Under that standard, the petitioner must show that it is "more probable than not" that the vaccination was the cause of the injury. *In re Winship*, 397 U.S. 358, 371 (1970) (*Harlan, J.*, concurring). The petitioner need not show that the vaccination was the *sole* cause or even the *predominant* cause of the injury or condition, but must demonstrate that the vaccination was at least a "substantial factor" in causing the condition, and was a "but for" cause. *Shyface v. Secretary of HHS*, 165 F. 3d 1344, 1352 (Fed. Cir. 1999). Thus, the petitioner must supply "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury;" the logical sequence must be supported by "reputable medical or scientific explanation, *i.e.*, by evidence in the form of scientific studies or expert medical testimony." *Althen*, 418 F. 3d at 1278; *Grant v. Secretary of HHS*, 956 F. 2d 1144, 1148 (Fed. Cir. 1992).

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[3]The original version of the Vaccine Injury Table was contained in the statute, at § 300aa-14(a). As will be detailed below, however, the Table has been administratively amended.

In this case, the question to be decided is whether the petitioner has prevailed via the "causation-in-fact" avenue.

II

HISTORY OF THE "RUBELLA/ARTHROPATHY" CASES IN GENERAL

In this case, as will be detailed below, the petitioner has suffered from chronic arthropathy--*i.e.*, joint pain and/or swelling--and alleges that her arthropathy was caused by a rubella vaccination. This case, thus, is one of many Program cases in which petitioners have alleged that rubella vaccinations have caused chronic arthropathy. The general history of these Program cases is relevant to the resolution of this case.

A. Proceedings in early 1990's concerning the general causation issue

A version of the "Vaccine Injury Table" was set forth in the statute establishing the Program, at § 300aa-14(a). That statutory version of the Table was applicable to petitions filed during the first several years of the Program's experience. That version of the Table, however, contained no provision concerning arthropathy, arthritis, or similar symptoms following any vaccination. Thus, from the beginning of the Program through early 1995, a petitioner suffering from arthropathy or a similar condition after a rubella vaccination had the burden of proving that the vaccination "caused-in-fact" the condition.

During the early 1990's, various petitioners filed a large number of Program cases involving allegations that rubella vaccinations caused chronic arthropathy. Accordingly, in order to most efficiently resolve all of those cases, the undersigned special master was assigned by the Chief Special Master to undertake an inquiry into the *general issue* of whether the rubella vaccine can cause chronic arthropathy, with the hope that knowledge and conclusions concerning that *general* causation issue, developed from the general inquiry, could be applied to each *individual* case.

Toward that goal, I initiated a series of meetings, involving counsel who each represented a large number of petitioners in Program cases involving claims of this type, and counsel for respondent. These counsel developed evidence to put before me concerning the general causation issue. They supplied a series of written reports from medical experts.[4] I also conducted an extensive

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[4]I have established a special file in the office of the Clerk of this Court known as the "Rubella Omnibus File." In that file I have placed copies of all the evidentiary items upon which I have relied in my rulings concerning the possible causal relationship between the rubella vaccine and chronic arthropathy. That file is open for inspection or copying by any interested person. A summary of the contents of that file appears as the Appendix to this Ruling.

I hereby incorporate that entire "Rubella Omnibus File" into the record of this case by this reference. For convenience, I will not physically place a copy of that entire voluminous File into the record of this case, but it shall be considered an integral part of the record of this case. I note that

search of relevant medical literature, based both upon bibliographies supplied by the aforementioned counsel and upon my own research. Then, in November of 1992, I conducted a three-day evidentiary hearing in which six medical/scientific experts, three sponsored by petitioners' counsel and three by respondent, testified concerning the issue.[5]

B. My analysis in the "1993 Order"

Based upon the medical evidence and expert testimony discussed above, I concluded, in an order filed on January 11, 1993, that the evidence was sufficient to support a determination that it is "more probable than not" that the rubella vaccine does cause some cases of chronic arthropathy. (I will refer to that order as the "1993 Order;" it was published as *Ahern v. Secretary of HHS*, 1993 WL 179430 (Fed. Cl. Spec. Mstr. Jan. 11, 1993).) A copy of that "1993 Order" was filed into the record of this case as an attachment to my order filed on May 28, 1999. In that "1993 Order," I concluded that a petitioner "more probably than not" has suffered a condition "caused-in-fact" by a rubella vaccination, and is thus entitled to a Program award, if that petitioner's case meets *all* of the following criteria:

1. The petitioner received a rubella vaccination at a time when the petitioner was 18 years of age or older.

2. The petitioner had a history, over a period of at least three years prior to the vaccination, of freedom from any sort of persistent or recurring polyarticular joint symptoms.

3. The petitioner has developed an antibody response to the rubella virus.

4. The petitioner experienced the *onset* of polyarticular arthropathic symptoms during the period between one and six weeks after the vaccination.

5. Polyarticular arthropathic symptoms continued for at least six months after the onset; or, if symptoms remitted after the acute stage, polyarticular arthropathic symptoms recurred within one year of such remission.

6. There is an absence of another good explanation for the arthropathy; the petitioner has not received a confirmed diagnosis of rheumatoid arthritis, nor a diagnosis of any of a series of specific conditions (see list at p. 10 of the 1993 Order).

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counsel for both parties in this particular case are thoroughly familiar with the contents of that File. See also footnote 6, below.

[5]The transcript of that 1992 hearing, entitled "Omnibus Hearing *Re*: Rubella/Chronic Arthropathy Issue," is contained in the Rubella Omnibus File as part C.

In reaching that conclusion, I noted that all six of the experts who testified at the 1992 hearing, including those who testified for respondent, agreed that at least in cases in which the vaccinee experienced acute polyarticular *actual arthritis* (*i.e.*, joint *swelling*), as opposed to *arthralgia* (*i.e.*, joint *pain* without swelling), during the expected time period after vaccination, any chronic arthritis suffered by that vaccinee thereafter could reasonably be attributed to the rubella vaccination. The respondent's experts differed with the petitioners' experts, rather, chiefly as to a single issue, concerning those cases that fit the diagnostic criteria set forth above, but in which in either or both of the acute and chronic stages of the condition the individual had only *arthralgia*, without any measurable *arthritis*. In such cases the petitioners' experts opined that the chronic arthralgia was likely vaccine-caused; the respondent's experts would not make such a finding. On that point of dispute, I found the petitioners' experts to be more persuasive, for reasons that I explained in the "1993 Order."

Accordingly, I concluded in the "1993 Order" that when a petitioner's case met the six criteria listed above, and there was no substantial case-specific evidence in that case pointing to some other cause, the evidence would support a conclusion that the petitioner's chronic arthropathy, whether it be chronic arthritis or arthralgia, was likely caused by the rubella vaccination.

C. Developments after the "1993 Order"

After I issued the above-described "1993 Order," several developments relevant to the general causation issue occurred, which I will briefly describe.

1. Resolution of cases

As a result of the above-described general proceedings that I conducted in 1992-93 concerning the general causation issue, culminating in my "1993 Order," a significant number of cases, each involving allegations that joint symptoms were caused by a rubella vaccination, were resolved. In 71 cases during the years 1993 through 2002, either I concluded that the requisite showing of causation *was* made, or the parties agreed upon an award based on the similarities between the petitioner's case and the criteria set forth in that Order. (*See, e.g., Long v. Secretary of HHS*, 1995 WL 470286, No. 94-310 (Fed. Cl. Spec. Mstr. July 24, 1995).) In 19 cases, I found that the petitioner failed to make the required "causation" showing. (*See, e.g., Awad v. Secretary of HHS*, 1995 WL 366013, No. 92-79V (Fed. Cl. Spec. Mstr. June 15, 1995).) I dismissed four cases on procedural grounds. Finally, in 52 additional cases, the petitioners voluntarily dismissed their cases apparently in light of the fact that the cases plainly did not seem to fit within the criteria of the "1993 Order."

2. Table Injury designation

The Vaccine Act provides that the Secretary of Health and Human Services may administratively amend the Vaccine Injury Table. Thus, the Table was administratively modified in 1995, with regard to vaccinations that include the rubella vaccine, with the addition of "chronic

arthritis" as a "Table injury" if incurred under certain specified circumstances. *See* 60 Fed. Reg. 7678 (1995). A second administrative revision to the Vaccine Injury Table was promulgated in 1997, retaining "chronic arthritis" as a Table Injury for rubella vaccinations, while slightly modifying the definition of that term for Table purposes. *See* 62 Fed. Reg. 7685, 7688 (1997). Those Table revisions adopted criteria for the new "chronic arthritis" Table Injury which are similar, but not identical, to the criteria that I set forth for "causation-in-fact" in my "1993 Order." The chief difference is that to qualify under the new Table Injury category, a petitioner must establish that he or she suffered "objective evidence * * * of acute *arthritis* (joint swelling)." (42 C.F.R. § 100.3(b)(6)(A) (1997 ed.), emphasis added.) That is, it must be demonstrated that a physician observed actual *arthritis* (joint *swelling*), not merely *arthralgia* (joint *pain*), in both the acute stage and the chronic stage of the vaccinee's illness. (42 C.F.R. § 100.3(b)(6)(A) and (B) (1997 ed.).) This requirement is more strict than the criterion that I adopted in my "1993 Order," in which I concluded that "causation-in-fact" of an arthropathic condition might be established even where, during the acute stage and/or the chronic stage, only *arthralgia* was reported.

Since 1995 a number of Program petitioners have successfully established that they have suffered compensable injuries under the new "chronic arthritis" Table Injury category. A number of other cases, however, remained on my docket in which the petitioner had suffered chronic arthropathy, but not under circumstances which correspond precisely to those set forth in the "chronic arthritis" Table Injury's regulatory definition. In each of these cases, the petitioner sought a finding of "causation-in-fact."

3. Additional inquiry in 2001-2002

During the late 1990's, several medical studies relevant to the general causation issue were completed, and the results of those studies were published. Accordingly, I determined that I should re-analyze the general causation issue in light of the new studies. Again, attorneys representing the petitioners and respondent submitted expert reports, and six such experts testified at a hearing held in 2001.[6]

After that hearing, I reviewed the general causation issue again, in light of the 1990's studies and the recent expert reports and hearing testimony. On December 13, 2002, I published a document entitled "Analysis of Recent Evidence Concerning General Rubella/Arthropathy Causation Issue." (I will refer to that document as the "2002 Analysis;" it was published as *Snyder v. Secretary of HHS*, 2002 WL 3196574 (Fed. Cl. Spec. Mstr. Dec. 13, 2002). That Analysis was filed into the record of this case on December 13, 2002.) In that "2002 Analysis," I concluded that while the overall argument for the general proposition that the rubella vaccine causes chronic arthropathy had been somewhat weakened, nevertheless a sufficient "causation-in-fact" case can still conceivably be made in an individual case. Considering all the evidence available, I concluded that the criteria

[6]A collection of the expert reports submitted in preparation for the 2001 hearing is contained at part D of the "Rubella Omnibus File." The transcript of the 2001 hearing constitutes part E of that File.

set forth at p. 4 above were still quite relevant to my analysis of any individual case. I modified those criteria in the two areas suggested by the recent evidence. That is, (1) the petitioner need only have been *past puberty* (not 18 years of age) at the time of vaccination; and (2) the onset of polyarticular symptoms must have taken place between *seven and 21 days* after vaccination (rather than between one and six weeks post-vaccination). Further, I stated that if any individual case falls squarely within those modified criteria, *and* there are no particular circumstances of the case that cast doubt on a causal relationship, *and* there is no additional medical evidence submitted in that case that alters my view of the general causation issue, then I would be likely to find "causation-in-fact" in that case. In other words, considering all the evidence that I had reviewed up until that point in time, I found the evidence sufficient to support a finding of causation in a particular case, *if* that case falls within those modified criteria, in the absence of countervailing evidence.

III

FACTS AND PROCEDURAL HISTORY OF THIS CASE

A. Facts

The petitioner, then 31 years of age, received a rubella vaccination on September 27, 1999. Sometime in early October, between October 3 and 13, she suffered the onset of joint pain in a number of joints. (See my discussion of this "onset issue" at pp. 75-79 of the transcript of the hearing held on June 25, 2003 (hereinafter "Tr.").) Since then, the petitioner has continued to report chronic pain in joint areas.

B. Procedural history

As noted above, the petitioner in this case contends that her chronic arthropathy--*i.e.*, joint pain--was caused by the rubella vaccination that she received on September 27, 1999. The petition was filed on June 4, 2002. According to my review of the record, the petitioner has never contended that her case fit within the new "chronic arthritis" Table Injury category added in 1995. Instead, petitioner has argued that her chronic joint pain was "caused-in-fact" by her rubella vaccination.

At the time when the petition was filed, I was in the process of preparing my opinion concerning the *second* "general causation proceeding" with respect to the rubella/arthropathy causation issue, described at pp. 6-7 above. Accordingly, petitioner requested that no case-specific proceedings in this case be held until after I issued that opinion.

After I issued, on December 13, 2002, the above-described "2002 Analysis," the parties in early 2003 made efforts to settle the case. When those efforts were unsuccessful, I elected to conduct an evidentiary hearing at which I would hear testimony from petitioner concerning the onset of petitioner's joint pain. I held such a hearing on June 25, 2003, and, at the conclusion thereof, I made remarks on the record, finding that petitioner likely experienced the onset of generalized joint pain between October 3 and 13, 1999. (Tr. 75-79.)

After that hearing, the parties engaged in a long course of settlement efforts, as noted in my regular Orders issued in the case. At a status conference on May 9, 2005, the parties notified me that they would be requesting my ruling on the issue of "entitlement"--*i.e.*, whether petitioner has suffered a vaccine-caused injury. Petitioner filed her brief concerning that issue on May 12, 2005, and respondent filed a response on July 12, 2005. In that response, respondent did not dispute that it would be appropriate for me to rule on the "entitlement" issue in this case based upon the record as it stands. Respondent did not request that I conduct an evidentiary hearing, nor did respondent offer any analysis of the particular facts of petitioner's case. Rather, respondent opposed petitioner's motion by raising several arguments to the effect that I erred in my "2002 Analysis" regarding the *general issue* of whether the rubella vaccination causes chronic arthropathy.

IV

ANALYSIS

Based upon all the evidence available to me, I conclude that it is "more probable than not" that petitioner's chronic joint pain was vaccine-caused. In reaching this conclusion, I have considered all of the evidence on the *general causation issue* that I heard during both the early 1990's proceedings and the 2001-2002 proceedings described above, as contained in the Rubella Omnibus File;[7] I have also considered, of course, the evidence specific to petitioner's own case.

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[7]I note that counsel for both parties have been well aware that in resolving this case I would utilize the evidence contained in the Rubella Omnibus File, and the knowledge concerning the general rubella/arthropathy causation issue that I have gained in the course of the above-described general proceedings concerning that issue. Indeed, the entire idea of the proceedings on the general issue was that information gained in those proceedings *would be applied to individual cases*.

In this regard, I note that it seems very appropriate in Program cases that a special master will at times utilize information and knowledge gained in one Program case in resolving another Program case. The chief reason is the very nature of the factfinding system set up under the Program. Congress assigned this factfinding task to a very small group of special masters, who would hear, without juries, a large number of cases involving a small number of vaccines. Congress gave these masters extremely broad discretion in deciding how to accept evidence and decide cases. (*See*, *e.g.*, § 300aa-12(d)(2).) Congress charged these masters to resolve such cases speedily and economically, with the minimum procedure necessary, and to avoid if possible the need for an evidentiary hearing in every case. *Id*; *see also* H.R. Rept. No. 99-660, 99th Cong., 2nd Sess., at 16-17 (*reprinted in* 1986 U.S.C.C.A.N. 6344, 6357-58). Congress even specified that a master should be "vigorous and diligent in *investigating*" Program factual issues (H.R. Rept. 99-660, *supra* at 17 (emphasis added)), in an "inquisitorial" fashion (H.R. Rept. No. 101-247, at 513 (*reprinted in* 1989 U.S.C.C.A.N. 1906, 2239)), indicating that a master can and should actively seek out, on his own, evidence beyond that presented by the parties to a particular case. Given this factfinding system, it appears that Congress intended that the special masters would gain expertise in factual issues, including "causation-in-fact" issues, that would repeatedly arise in Program cases. It appears that Congress *intended* that knowledge and information gained by the masters in the course of Program cases would be applied by the masters to other Program cases, when appropriate. A number of published opinions have

A. Petitioner's case meets the causation criteria set forth in my "2002 Analysis"

Petitioner's case meets the causation criteria set forth in my "2002 Analysis," as respondent does not dispute. First, petitioner received a rubella vaccination at the age of 31 years. Second, she had a pre-vaccination history free from persistent or recurring polyarticular joint symptoms. Third, after the vaccination, she developed an antibody response to the rubella virus. Fourth, between one and three weeks after her vaccination, petitioner experienced an apparent reaction to that vaccination that included pain in multiple joints. Fifth, petitioner has continued to experience intermittent pains in multiple joints since then. Sixth, there is an absence of another good explanation for her chronic joint pain.

The fact that petitioner's case meets these criteria is sufficient reason to conclude that it is probable that her chronic joint pain was vaccine-caused, for the reasons set forth in my "2002 Analysis" document filed in this case on December 13, 2002.

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recognized that this Congressional intent is implicit in the factfinding system devised by Congress. *See, e.g., Ultimo v. Secretary of HHS*, 28 Fed. Cl. 148, 152-53 (1993); *Loe v. Secretary of HHS*, 22 Cl. Ct. 430, 434 (1991).

The idea of utilizing an "omnibus proceeding" to gather information applicable to a significant number of Program cases, therefore, would seem to fit clearly within this Congressional intent. This procedure not only allows a special master to bring special expertise to particular cases, but also helps the Program to accomplish the Congressional goals of speedy and economical resolution of cases. This general procedure, therefore, has been utilized not only in the "rubella arthropathy" cases before me, but also for two other large groups of cases, *i.e.*, the "poliomyelitis" cases before Chief Special Master Golkiewicz (*see, e.g., Gherardi v. Secretary of HHS*, No. 90-1466V, 1997 WL 53449 (Fed. Cl. Spec. Mstr. Jan. 24, 1997)) and the "tuberous sclerosis" cases before Special Master Millman (*see, e.g., Costa v. Secretary of HHS*, 26 Cl. Ct. 866, 868 (1992)).

Of course, the special masters managing these groups of cases have also taken care to ensure that the rights of *individual petitioners* to fair resolution of their cases is not lost in the efficiency of an "omnibus proceeding." For example, before, during, and after the general proceedings that I have conducted concerning this rubella/arthropathy causation issue, I have stressed to all counsel in the rubella/arthropathy cases that each party in each individual case has the right to offer additional relevant evidence, and to challenge the validity of the evidence received during the "omnibus proceeding."

Given the above-described Program factfinding system devised by Congress, accompanied by the procedural safeguards for individual cases described above, I am satisfied that it is appropriate for me to utilize the evidence gained in the "omnibus proceeding" in resolving *individual* petitioners' cases. Neither the respondent, nor any petitioner in any individual Program case, has ever argued otherwise.

Further, as noted above, respondent' brief, filed on July 12, 2005, does not point to anything particular about petitioner's case that would indicate that petitioner's chronic joint pain was *not* vaccine-caused.

B. Respondent's arguments

As noted above, respondent, in the "Response" filed in this case on July 12, 2005, raised several arguments to the effect that I erred in my "2002 Analysis," in analyzing the *general issue* of whether the rubella vaccine causes chronic arthropathy. Essentially, these were the same arguments that respondent raised in oral argument at the 2001 hearing. Accordingly, I have already responded to them in the "2002 Analysis," so I will not repeat that discussion here. I will, however, specifically discuss respondent's argument in one respect. That is, respondent seems to assert that if I apply my conclusion contained in the "2002 Analysis" to an individual case, I would improperly "create a presumption" similar to a "Table Injury." (Response at 4-5.) Respondent is mistaken.

In setting up the Vaccine Injury Table, Congress did create a *statutory presumption* of causation in certain cases. That is, if the fact pattern of a particular case fits within a Table Injury category, then *by operation of law* the Program factfinder must *presume* that the injury was vaccine-caused, unless the evidence of record preponderates in favor of causation by some specific non-vaccine cause.

In contrast, in this case, as in all of the rubella/arthropathy cases that I have compensated over the past eleven years, I am *not* employing any "presumption." Rather, in each of the cases in which I have decided the "entitlement" issue (of the cases that have been compensated, the vast majority settled without any formal ruling concerning the "entitlement" issue), my procedure has been to consider all the evidence available to me, and determine whether, based upon all of that evidence, it is "more probable than not" that this *particular vaccinee's* condition of chronic arthropathy was vaccine-caused. In that respect, these rubella/arthropathy cases are little different from any other Program case in which the issue is "causation-in-fact." The only difference is that while in a typical Program case the evidence to be considered is contained entirely in the record of that individual case, in the rubella/arthropathy cases I have an additional body of evidence--from the *general causation proceedings*--upon which to draw, in order to *supplement* the evidence brought forth in the individual case record. I am able to *put together* the evidence from the general causation proceedings and the individual case record, and, based upon *all* of that evidence, determine whether it is "more probable than not" that the *particular vaccinee's* condition was vaccine-caused.

In other words, as I have stressed before (including a discussion at pp. 24-25 of my "2002 Analysis" filed in this case on December 13, 2002), in neither my "1993 Order" nor in my "2002 Analysis" did I purport to find causation in *any particular case*. Those documents merely reported that based upon all of the medical evidence that I had reviewed *up to that point* in time, *if* the circumstances of a petitioner's case fell within certain criteria, and *if* there were no particular circumstances of the case that cast doubt on a causal relationship, and *if* there was no additional medical evidence submitted, then I would find causation in that case. In every individual case, each

party has always had the option of putting *case-specific* evidence before me at an evidentiary hearing. The "1993 Order" and "2002 Analysis," thus, merely *educated the parties* as to how I viewed the medical evidence that I had *already* evaluated, so that they could attempt to settle any individual case. The individual cases, then, if they did not settle, always had to be decided on a case-by-case basis, perhaps by simply applying to a case the conclusions that I had reached during the general causation proceedings, or perhaps by adding to the mix additional evidence offered by either party in the particular case.

In short, I have not applied any inappropriate "presumption," or created a type of "Table Injury," in this case. Instead, I have merely made a specific ruling concerning "causation-in-fact" in this particular case, by means of studying the evidence contained in the record of this case, *and also applying to this case* the evidence appearing in the expert testimony and medical studies supplied in the general causation proceedings.

V

FURTHER PROCEEDINGS

For the reasons stated above, I find it "more probable than not" that petitioner's chronic joint pain was vaccine-caused. Therefore, I conclude that she is entitled to a Program award on account of that chronic condition. Thus, the parties should continue their discussions toward the goal of agreeing upon on the appropriate *amount* of the award. We will discuss that topic at the next scheduled status conference.

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George L. Hastings, Jr.
Special Master