

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**  
**OFFICE OF SPECIAL MASTERS**

\*\*\*\*\*  
MARK MORAN, \*  
\*  
                    Petitioner, \*  
\*  
v. \*  
\*  
SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*  
\*  
                    Respondent. \*  
\*\*\*\*\*

No. 07-363V  
Special Master Christian J. Moran

Filed: December 5, 2007

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

For the reasons that follow, petitioner’s claim is hereby DISMISSED.

**I. Procedural History**

Mark Moran, filed a petition, *pro se*, on June 8, 2007, under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq. In the petition, he alleged that he received the hepatitis B vaccination on June 4, 2004, and on June 8, 2004, suffered chronic arthritis, fever of unknown origin, eosinophilic syndrome, postural orthostatic tachycardia syndrome, brachial

---

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 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

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 to move to delete such information before 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.

neuritis, and other injuries. No medical records were filed with the petition.

The initial order was sent out on June 26, 2007. Despite several attempts by the court to contact the petitioner, no contact was ever made and petitioner never contacted to the court in response to the order.

On September 6, 2007, respondent filed a combination Rule 4 report and motion to dismiss. In its report, respondent moved to dismiss the case because the petition was not accompanied by any documentation of the vaccine or alleged injuries, as required by Vaccine Rule 2. As such, respondent argues that it is unable to analyze the merits of the claim and accordingly, the claim should be dismissed. Resp't Rep't, dated Sept. 6, 2007, at 2.

The court again unsuccessfully tried to contact petitioner and left a voice mail message with the phone number contained within the petition on September 19, 2007.

On September 20, 2007, this court issued an order to show cause why this case should not be dismissed, requiring a response from Mr. Moran by October 22, 2007. No response was received.

## **II. Factual History**

The only factual history is that which is contained within the petition. Mr. Moran alleges that he received the hepatitis B vaccination on June 4, 2004. He also claims he suffered from chronic arthritis, fever of unknown origin, eosinophilic syndrome, postural orthostatic tachycardia syndrome, brachial neuritis, and other injuries, on June 8, 2004.

## **III. Discussion**

This case is deficient in two respects. First, Mr. Moran has not prosecuted the case diligently. Second, the existing record lacks the evidence necessary to support his claim for compensation.

After filing his petition, the court issued an initial order directing Mr. Moran to contact the court to schedule the initial status conference, pursuant to Vaccine Rule 4(b). See Order, dated June 26, 2007. Mr. Moran has not done so. When a petitioner (or plaintiff) fails to comply with Court orders to prosecute their cases, the Court may dismiss their cases. Sapharas v. Sec’y of Health & Human Servs, 35 Fed. Cl. 503 (1996); Tsekouras v. Sec’y of Health & Human Servs, 26 Cl. Ct. 439 (1992), aff’d, 991 F.2d 810 (Fed. Cir. 1993) (table); Vaccine Rule 21(c); see also Claude E. Atkins Enters., Inc. v. United States, 899 F.2d 1180, 1183 (Fed. Cir. 1990) (affirming dismissal of case for failure to prosecute for counsel’s failure to submit pre-trial memorandum); Adkins v. United States, 816 F.2d 1580, 1583 (Fed. Cir. 1987) (affirming dismissal of case for failure of party to respond to discovery requests).

In addition, to satisfy their 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. Sec’y of Health & Human Servs, 418 F. 3d 1274, 1278 (Fed. Cir. 2005).

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 medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). In determining whether a petitioner is entitled to compensation, the special master shall consider all material contained in the record. 42 U.S.C. § 300aa-13(b)(1). This universe necessarily includes “any . . . conclusion, [or] medical judgment . . . which is contained in the record regarding . . . causation . . . of the petitioner’s illness.” 42 U.S.C. § 300aa-13(b)(1)(A).

By failing to submit any medical records or a medical theory and causal relationship between the vaccination and his injuries, Mr. Moran has not effectively alleged that he has an

injury that is attributable to a vaccine.

Accordingly, this case is DISMISSED. In the absence of a timely motion for review, the Clerk's Office is ordered to enter judgment in favor of respondent.

IT IS SO ORDERED.

---

Christian J. Moran  
Special Master