

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

ALLISON HAGER,
Petitioner-Appellee,

v.

**SECRETARY OF HEALTH AND HUMAN
SERVICES,**
Respondent-Appellant.

2011-5104

Appeal from the United States Court of Federal
Claims in case no. 01-VV-307, Judge Nancy B. Firestone.

ON MOTION

Before RADER, *Chief Judge*, LINN and PROST, *Circuit
Judges.*

RADER, *Chief Judge.*

ORDER

The Secretary of Health and Human Services moves
for summary reversal of the judgment of the United

States Court of Federal Claims in light of our recent decision in *Porter v. Secretary of Health and Human Services*, 663 F.3d 1242 (Fed. Cir. 2011). Allison Hager opposes.

This appeal arises out of Hager's petition for compensation under the National Childhood Vaccine Injury Act of 1986. Hager asserted that the hepatitis B vaccine caused her to suffer autoimmune hepatitis, and that other disorders, including primary sclerosing cholangitis (PSC), developed as a consequence of her autoimmune hepatitis.

The petition was assigned to a special master who consolidated Hager's case with those of others petitioners, including the petitioners in *Porter*, all of who sought compensation relating to the hepatitis B vaccine. All of the petitioners relied upon the testimony and medical theories of Dr. Joseph Bellanti in support of their petitions.

The special master in relevant part denied the petitions on the ground that Dr. Bellanti's expert testimony and medical theories did not provide a credible explanation of how the hepatitis B vaccine could cause autoimmune hepatitis or her other conditions. The Court of Federal Claims reversed. The Court of Federal Claims determined that it was inappropriate for the special master to consider the petitioner's expert's credibility in evaluating a petitioner's showing of causation in fact, and Dr. Bellanti's medical theories sufficiently established the vaccine caused her condition.

The government appealed, and Hager's case was stayed pending *Porter*. On November 22, 2011, this court in *Porter* reversed the judgment of the Court of Federal Claims and remanded for affirmance of the special master's determination that the petitioners were not entitled

to compensation under the Vaccine Act. *Porter*, 663 F.3d 1242.

Now, the government seeks summary reversal asking this court to order reinstatement of the special master's determination that Hager is not entitled to compensation under the Vaccine Act in view of *Porter*. Summary disposition of a case "is appropriate, *inter alia*, when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists." *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994).

This court agrees that summary reversal is warranted here. In *Porter*, this court examined the special master's determination that Dr. Bellanti's theories were not credible and not sufficient to establish the hepatitis B vaccine could cause autoimmune hepatitis, and in doing so held that the special master's decision was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Because the theories of causation reviewed in *Porter* are identical to those that were before the special master in Hager's case, the government is correct that *Porter* has foreclosed any entitlement to compensation under the Vaccine Act by Hager for autoimmune hepatitis purportedly caused by the hepatitis B vaccine. As a result, we summarily reverse the judgment of the Court of Federal Claims.

Accordingly,

IT IS ORDERED THAT:

(1) The motion is granted. The judgment of the Court of Federal Claims is summarily reversed.

(2) Each side shall bear its own costs.

FOR THE COURT

MAY 01 2012

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Ronald C. Homer, Esq.
Sarang V. Damle, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAY 01 2012

JAN HORBALY
CLERK