

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-120

Decision No. LIB-II-182

Counsel for Claimant:

Joshua M. Ambush, Esq.
Joshua M. Ambush, LLC

PROPOSED DECISION

This two-part claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by 5 U.S.C. §552(b)(6) in connection with the terrorist incident at Lod Airport in Tel Aviv, Israel on May 30, 1972.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009,*

from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission

("January Referral").

The present claim is made under Category D, or alternatively, under Category A.

According to the January Referral, Category D consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by [the Department of State's] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to [the Department of State's] December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 6. Category A consists of:

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to [the Secretary of State's] referral of December 11, 2008.

Id. at ¶ 3. Attachment 1 to the January Referral lists the suits comprising the Pending Litigation

The January Referral, as well as a December 11, 2008 Referral Letter ("December Referral") from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008,

the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* ("Claims Settlement Agreement"), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

On April 7, 2011, the Commission adjudicated claimant's physical injury claim under the December Referral. In its decision denying the claim, the Commission concluded that the claimant had not met his burden of proving an injury sufficient to meet the Commission's standard for physical injury. Specifically, the Commission concluded that claimant's injuries, which he characterized as "severe permanently disabling psychiatric injuries," were not "physical injuries" as contemplated in the December Referral. The denial of claimant's December Referral claim was affirmed following an oral hearing on November 17, 2011. *Claim of* [REDACTED] 5 U.S.C. §552(b)(6) [REDACTED]; Claim No. LIB-I-033, Decision No. LIB-I-046 (2011) (Final Decision).

BASIS OF THE PRESENT CLAIM

On June 30, 2010, the Commission received from claimant a completed Statement of Claim in which he asserts a claim for additional compensation under Category D of the January Referral. The submission included evidence of claimant's U.S. nationality and the extent of his alleged injuries. By letter dated November 16, 2011, while the Final Decision regarding his claim under the December Referral was still pending, claimant requested that, in the event his December Referral claim was denied—which, as noted above, it eventually was—the Commission adjudicate his claim under Category A. In his letter, claimant presented argument concerning his allegations that he was held hostage or unlawfully detained, and attached several additional exhibits in support of these allegations.

With regard to his claim under Category D, claimant asserts that "\$3 million does not adequately compensate the special circumstances presented by [his] severe psychiatric and physical injuries." The evidence submitted includes reports of several psychiatric evaluations; newspaper clippings; benefits-related records from the Israeli National Insurance Institute; copies of various scholarly articles and excerpts from medical texts discussing mental health, particularly in the context of combat and terror incidents; and other documents in support of his claim.

As to his claim under Category A, claimant asserts that he was held against his will by virtue of the fact that the gunmen who perpetrated the attack "turn[ed] the crowded baggage claim area of Lod Airport into a combat zone with no means of escape[.]" and because he "reasonably felt [an] imminent threat to his life during the Lod Airport massacre." In support of this aspect of his claim, claimant has supplemented his

existing submission with copies of newspaper articles describing the Lod Airport incident, and in particular, the actions of the three terrorists during the massacre.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the categories of claims defined under the January Referral. As noted above, Categories A and D of the January Referral both require that the claimant be a U.S. national. January Referral, *supra*, ¶¶ 3, 6. In addition, Category A requires that the claimant not have received an award under the December Referral, that the claimant be a named party in the Pending Litigation listed in Attachment 1 to the January Referral, and that the claimant prove that the Pending Litigation against Libya has been dismissed. Category D, because it requires that the claimant *must have* received an award under the December Referral, also incorporates the requirements that the claimant be a named party in the Pending Litigation and that this litigation was dismissed. *Id.* ¶¶ 3, 6.

Nationality

The Commission determined in its decision on claimant's injury claim under the December Referral that the claim was owned by a U.S. national from the time of the incident continuously through the effective date of the Claims Settlement Agreement. That determination applies equally to satisfy the nationality requirement here.

Award Under the December Referral

To fall within Category D of the January Referral, the claimant must have received an award under the December Referral. As noted above, the Commission denied the claimant's physical injury claim under the December Referral. On this basis,

the Commission concludes that claimant's claim under Category D fails to meet the jurisdictional requirements established under the January Referral, and that this portion of his claim is not eligible for adjudication on the merits. However, for this same reason, he does satisfy the requirement under Category A that the claimant *not* have received an awarded under the December Referral.

Pending Litigation

As noted above, Category A of the January Referral requires that the claimant be a named party in one of the Pending Litigations listed in Attachment 1 to the January Referral and provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, *supra*, ¶ 3-4. The Commission determined, in its decision on claimant's physical injury claim under the December Referral, that the Pending Litigation in question, *Franqui, et al. v. Syrian Arab Republic, et al*, Case No. 06-cv-734, filed in the United States District Court for the District of Columbia, had been dismissed under Plaintiffs' Stipulation of Dismissal with Prejudice. That determination also applies here.

In summary, therefore, the Commission concludes, on the basis of the foregoing, that the Category A portion of this claim is within the Commission's jurisdiction pursuant to the January Referral and is entitled to adjudication on the merits. The claim under Category D must be, and hereby is, dismissed.

Merits

Standard for Claims under Category A

As stated in the January Referral, to be eligible for compensation, a claimant asserting a claim under Category A must meet "the standard for such claims adopted by

the Commission” for purposes of this referral. January Referral, *supra*, ¶ 3. The Commission held in *Claim of* 5 U.S.C. §552(b)(6) ; Claim No. LIB-II-002, Decision No. LIB-II-002 (2009) (Proposed Decision),¹ that in order for a claim for hostage-taking or unlawful detention pursuant to Category A to be considered compensable, a claimant must have been:

- (a) held illegally against his or her will;
- (b) in a particular area; and
- (c) for an extended period of time, or for shorter periods of time in circumstances in which he or she reasonably felt an imminent threat to his or her life.

Id. at 8.

Application of Standard to this Claim

According to his Statement of Claim and accompanying documents, the claimant was present at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three gunmen attacked passengers waiting in the baggage claim area with machine guns and hand grenades. As noted in the Commission’s Final Decision on the claimant’s December Referral claim, claimant has asserted that one of the grenades tossed by the terrorists exploded directly adjacent to him, and that he subsequently fell to the ground. In addition, claimant has stated that he witnessed people around him bleeding and screaming before losing consciousness.

Specifically addressing the Commission’s standard for Category A claims, claimant argues that “[t]he attackers were positioned in such a way to provide no means of escape for the victims.” Moreover, he argues that the “constant machine gunfire and

¹ In *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-II-002, Decision No. LIB-II-002 (2011) (Final Decision), the Proposed Decision was modified as to the amount of compensation only.

exploding shrapnel grenades into the crowd made it impossible for those passengers near the conveyor belts, including [claimant], to escape for fear of being killed or injured.” He states that the attackers were positioned in front of him and were firing “to ‘right and left’” and notes that “grenades were exploding all around him.” He further states that he dove to the floor to avoid the gunfire, and consequently “remained trapped throughout the attack.” Claimant asserts that, in light of the scene unfolding around him, he was “‘sure death was near.’”

As noted above, in order for a claimant under Category A to demonstrate that he or she was held hostage or unlawfully detained, the alleged victim must prove, in part, that he or she was “held illegally against his or her will.” To satisfy this criterion, a claimant must prove, among other things, that the party accused of either hostage-taking or unlawful detention intended to seize or detain the claimant. *See Claim of* ⁵ U.S.C. §552(b)(6)

, Claim No. LIB-II-011, LIB-II-105 (2012) (Final Decision). Here, in contrast to ⁵ U.S.C. §552(b)(6), there is no evidence in the record that the three gunmen in Lod Airport intended to do anything other than unleash a barrage of gunfire and grenades for the purpose of killing and injuring as many people as possible. While claimant and other passengers in the baggage claim area may have reasonably felt that they could not leave the immediate area without risking their lives, claimant has not shown that the gunmen intended to physically detain or hold anyone hostage. Under the Commission’s standard for Category A claims, therefore, it cannot be said that the claimant was “held illegally against his or her will.”

In this case, based on the entirety of the evidence, the Commission finds that the claimant has failed to provide evidence sufficient to establish that he was “held illegally

against his or her will”; “in a particular area”; “for an extended period of time, or for shorter periods of time in circumstances in which he or she reasonably felt an imminent threat to his or her life,” as required under the Commissions’ standard for hostage-taking or unlawful detention.

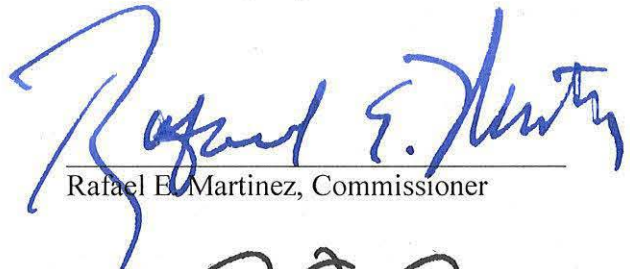
In light of the foregoing, the Commission is constrained to conclude that the claimant, 5 U.S.C. §552(b)(6) does not qualify for compensation under Category A of the January Referral. Accordingly, his claim must be and is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

Dated at Washington, DC, June 20, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael B. Martinez, Commissioner



Anuj C. Desai, Commissioner

**The decision was entered as the
Commission’s Final Decision on**

August 28, 2012

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2011).