

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-110

Decision No. LIB-II-111

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is for additional compensation based on the alleged severity of physical injuries suffered by 5 U.S.C. §552(b)(6) 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. 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. 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 October 16, 2009, the Commission adjudicated claimant's physical injury claim under the December Referral. In its decision, the Commission determined that the claimant was injured as a result of a bullet wound to the left side of his chest and a corresponding exit wound to his back. Further, the Commission concluded that these injuries — which required a 4-day hospital stay and a course of antibiotics — met the Commission's standard for physical injury and, consequently, that the claimant was entitled to compensation in the amount of \$3 million. *Claim of*. 5 U.S.C. §552(b)(6)
Claim No. LIB-I-035, Decision No. LIB-I-026 (2009) (entered as Final on November 23, 2009).

BASIS OF THE PRESENT CLAIM

On June 22, 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, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of an award under the December Referral, and the extent of his injuries. Specifically, claimant asserts that the "severe bullet wounds and accompanying psychiatric trauma warrants further compensation beyond the initial fixed amount of three million dollars." The evidence submitted includes claimant's statements,

medical records indicating the treatment received by claimant for his injuries, newspaper articles contemporaneous to the attack, and a recent photograph of claimant's chest.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission's jurisdiction here is limited to the category of claims defined under the January Referral; namely, claims of individuals who: (1) are U.S. nationals; (2) received an award under the December Referral; and (3) have dismissed their respective Pending Litigation cases against Libya. January Referral, *supra*, ¶ 3.

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 date 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 the category of claims referred to the Commission, the claimant must have received an award under the December Referral. As noted above, the Commission in its Final Decision awarded the claimant \$3 million based on his physical injury claim under the December Referral. Accordingly, the Commission finds that the claimant has satisfied this element of his Category D claim.

Dismissal of the Pending Litigation

The January Referral also requires that the claimant provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, *supra*, ¶ 3. 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, was dismissed under Plaintiff's Stipulation of Dismissal with Prejudice. That determination also applies here.

In summary, the Commission concludes, on the basis of the foregoing, that this claim is within the Commission's jurisdiction pursuant to the January Referral and is entitled to adjudication on the merits.

Merits

Category D of the January Referral requests, in pertinent part, that the Commission determine whether "the severity of the injury is a special circumstance warranting additional compensation." In making this determination, the Commission considers the following. First, the Commission is familiar with the nature of all of the injuries that fall under Category D; as indicated above, in its adjudication of claims under the December Referral, the Commission has already examined and awarded compensation for all of the eligible Category D claims. Second, the Commission's standard for physical injury in this program sets a relatively low threshold for compensable injuries: in order to meet the Commission's standard in this program, a claimant need only establish that he or she suffered an injury that is discernible, and more significant than a superficial injury. *See Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001, at 8-9 (2009). Third, the amount of compensation awarded for compensable injuries in this program—a fixed amount of \$3 million for each compensable injury—is, in the Commission's experience, exceptionally high when compared to other claims programs, and extraordinarily high for compensable injuries that were not severe, but which nonetheless met the Commission's standard. Therefore, to the extent that a monetary

award can ever adequately compensate for a physical injury, the eligible claimants in this program have, for the most part, been adequately compensated via the Commission's awards under the December Referral.

Considering the foregoing, the Commission concludes that only the most severe injuries will constitute a special circumstance warranting additional compensation under Category D. In determining which injuries are among the most severe, the Commission considers the nature and extent of the injury itself, the impact that the injury has had on claimant's ability to perform major life functions and activities—both on a temporary and on a permanent basis—and the degree to which claimant's injury has disfigured his or her outward appearance. These factors are applied to the present claim as set forth below.

First, as noted above, the claimant bases his Category D claim for additional compensation on the alleged severity of the bullet wound he suffered and the “accompanying psychiatric trauma.” With regard to the portion of this claim associated with psychiatric trauma, the Commission notes that the January Referral limits Category D to “claims of U.S. nationals . . . for physical injury[,]” where “the Commission determines that the severity of *the* injury is a special circumstance . . .” (emphasis added). The Commission finds that “the injury” referred to under this Category is the injury for which an award was issued by the Commission under the December Referral. In this case, as noted above, the Commission determined that the compensable injury under the December Referral was the bullet wound to the claimant's chest, not the “severe, mental anguish” for which he also claimed compensation. Moreover, the Commission has previously determined that compensation under the December Referral is limited to claims for physical, not psychological, injury. *See, e.g., Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-I-033, Decision No. LIB-I-046 (2011) (Proposed Decision); *Claim of*

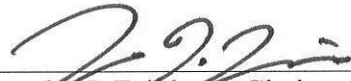
5 U.S.C. §552(b)(6) , Claim No. LIB-I-041, Decision No. LIB-I-030 (2010). For these reasons, claimant's request for additional compensation for psychological trauma is rejected.

Second, in support of his claim for additional compensation relating to his chest injury, claimant has submitted, among other documents, a declaration along with a recent photograph of the scar resulting from the bullet wound he suffered. In his declaration, claimant asserts that, due to the injury to his chest, he experiences "pain in [his] left side, around the area of the injury, when it rains," causing him "to move [his] left arm much more slowly than [he] would normally." With regard to claimant's disfigurement, the photograph submitted by claimant reveals a scar located on the left side of claimant's chest, near his underarm which claimant describes as a "deep red three-inch scar with discoloration at the last right inch of the scar." Claimant asserts that "the scar has ... caused [him] humiliation and embarrassment[,] and, consequently, he "never take[s his] shirt off in public." In addition, according to claimant, "[t]he scar on [his] chest is a constant reminder that [his] late wife was killed in [the] attack while [he] survived."


Considering the totality of the evidence submitted, the Commission is not persuaded either that any of the claimant's major life activities have been limited in a sufficiently significant way as a result of the injury to his chest, or that there was a sufficiently significant disfigurement to his outward appearance so as to qualify him for additional compensation. In this regard, the Commission notes that since 1972 there is no evidence of any ongoing treatment to identify or treat in any way the impairments he alleges resulted from the initial injury to his chest. Consequently, the Commission concludes that the severity of the injury in this claim does not rise to the level of a special circumstance warranting additional compensation under Category D.

Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, December 15, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Felghery, Chairman



Rafael E. Martinez, Commissioner

**This decision was entered as the
Commission's Final Decision on**
JAN 18 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) (2010).