

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-130

Decision No. LIB-II-040

Counsel for Claimant:

Neal M. Sher, Esq.

Oral hearing held on October 17, 2011.

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained by 5 U.S.C. §552(b)(6) at Lod Airport in Tel Aviv, Israel on May 30, 1972. By Proposed Decision entered May 10, 2011, the Commission denied claimant's claim on the ground that he 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 "deep depression, anxiety, and classic symptoms of post traumatic stress disorder," did not meet the Commission's physical injury standard under Category E of the January 15, 2009 *Letter 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 Letter"), and were therefore not compensable under that Category.

On May 17, 2011, the claimant filed an objection and requested an oral hearing. On September 12, 2011, the claimant submitted a hearing brief containing further evidence and argument in support of his objection. The brief was accompanied by a medical opinion from a Dr. Grasso, a Veterans Administration psychiatrist who claimant had identified as an expert in post-traumatic stress disorder (“PTSD”). The hearing on the objection was held on October 17, 2011.

In the objection brief and during the hearing, counsel for the claimant argued that the terms of the January Referral Letter do not require that the Commission reject claims for PTSD and, furthermore, that there is substantial medical and legal authority establishing that PTSD is itself a physical injury.

DISCUSSION

In its Proposed Decision in this claim, the Commission determined that the January Referral Letter contemplates a distinction between “physical” and “personal” injuries and precludes it from awarding compensation for anything other than physical injuries. Further, the Commission noted that the distinction between physical and mental injuries is well-established in both international conventions and decisions of international tribunals.

Counsel argues, however, that the January Referral Letter does not define the term “physical injury,” and that the Commission therefore has the discretion to determine—based on the weight of the medical and legal authority—that PTSD constitutes a physical injury under Category E. As support for his argument, counsel cites the opinion of Dr. Grasso that “the predictable brain changes seen in PTSD are consistent with PTSD being a physical injury,” explaining that PTSD “causes alterations in brain chemistry that lead

to changes in brain structure, just as other physical injuries ... cause measurable injuries and alterations.”

Before addressing counsel’s legal arguments in support of claimant’s objection, the Commission must first note that no indication is given anywhere in the record of this claim that Dr. Grasso or any other medical practitioner actually examined the claimant and detected in him “changes in brain structure” of any kind, let alone changes that could be said to have resulted from the Lod Airport incident. Therefore, even if the Commission were to accept Dr. Grasso’s opinion as valid in principle—which, as discussed below, the Commission does not—the record before it in this case lacks any evidence that would enable it to determine that the claimant actually suffered an injury meeting its physical injury standard. On this basis alone, the claim must be denied.

Claimant’s contention, in essence, is that the Commission has discretion to define the term “physical injury” to include PTSD, because the term “physical injury” was not expressly defined in the January Referral Letter. Furthermore, claimant argues that the Commission should define “physical injury” to include PTSD because “[t]here is federal authority which stands for the proposition that PTSD can and should be treated as a physical injury.” In particular, claimant refers to jurisprudence on the interpretation of the term “bodily injury”—which he analogizes to the term “physical injury”—found in both Article 17 of the Convention for the Unification of Certain Rules Relating to

International Carriage by Air, Oct. 12, 1929, 49 Stat. 3000, 137 L.N.T.S. 11 (hereinafter Warsaw Convention)¹ and in domestic contracts for insurance.

In referring to jurisprudence interpreting the Warsaw Convention to support his objection, claimant relies on *Weaver v. Delta Airlines, Inc.*, 56 F. Supp. 2d 1190 (D. Mo. 1999) (*vacated voluntarily by the parties*, 211 F. Supp. 2d 1252 (2002)).² The *Weaver* court had held that PTSD was a compensable “bodily injury” under the Warsaw Convention, since PTSD “evidences actual trauma to brain cell structures,” and determined that the plaintiff’s claim therefore was “based on a definite diagnosis of a disorder that arises from physical injury that is medically verifiable.” Claimant argues that the reasoning in the *Weaver* decision reinforces the scientific evidence he has submitted.

Claimant’s argument that *Weaver* supports an interpretation of “physical injury” that encompasses PTSD is unpersuasive. As a California state court later noted, the *Weaver* court was the only court to have held that PTSD was a compensable “bodily injury” under the Warsaw Convention, and that this holding has been subject to later criticism. *Doe v. United Airlines, Inc.*, 73 Cal. Rptr. 3d 541, 549-51 (Cal. Ct. App. 2008). Furthermore, the *Weaver* court itself noted that in order for a mental injury to be “bodily injury” there must be a medically verifiable physical injury from which the disorder arises.³ Thus, claimant’s citation to *Weaver* as authority for a favorable interpretation of

¹ The English translation of Article 17, as employed by the Senate upon offering its advice and consent to the Convention in 1934, reads as follows:

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Warsaw Convention, art. 17, *supra*, 49 Stat. at 3018.

² Counsel did not apprise the Commission of the fact that this decision was voluntarily vacated by the parties.

³ *Weaver v. Delta Airlines, Inc.*, 56 F. Supp. 2d. 1190, 1192.

the term “bodily injury” in the Warsaw Convention does not support a broader reading of the term “physical injury” in Category E of the January Referral Letter, but in fact reinforces the requirement in the Commission’s physical injury standard that there be a medically verifiable physical injury. As previously noted, the claimant has not submitted any evidence indicating such an injury in the present claim.

In the insurance context, claimant first cites a decision from the U.S. District Court for the District of Utah, in which the court noted that many state courts recognize that claims for emotional distress, when accompanied by “appreciable physical manifestations can qualify as [claims for] ‘bodily injury’ within the meaning of [an] insurance policy.” *American National Property and Casualty Company v. Jackson*, 2010 WL 2555120 (D. Utah, 2010) (citing *Garvis v. Employers Mut. Cas. Co.*, 497 N.W.2d 254 (Minn. 1993); and *Trinity Universal Ins. Co. v. Cowan*, 906 S.W.2d 124 (Tex. App. Austin 1995)). Claimant refers in particular to the court’s discussion of the physical impact of PTSD, specifically, that “symptoms of PTSD often include ... difficulty eating and sleeping, a racing heart and sweating.” Claimant also cites a Northern District of Texas decision wherein the court, applying domestic state law, found that “[t]he clear weight of authority holds that physical symptoms of emotional distress constitute a ‘bodily injury’ in the insurance context.” *Haralson v. State Farm Mutual Automobile Insurance Company*, 564 F.Supp.2d 616 (N.D. Texas, 2008). According to claimant, Dr. Grasso’s medical opinion “fully supports the court findings that there are physical symptoms and manifestations of PTSD.”

The Commission also finds this line of argument to be unpersuasive. While the U.S. District Court holdings cited by the claimant may be of some weight in some contexts, it is the Commission’s view that they do not provide sufficient reason to

disregard what the Commission concludes was the Department of State's clear intent to limit the claims covered by Category E of the January Referral Letter to those based on physical injuries.

As explained in its Proposed Decision in this claim, under Category E of the January Referral Letter, the Commission may only provide compensation for claims for physical injury and wrongful death. The State Department's reference in the January Referral letter to compensation for "physical injury" claims, and not personal injury claims more broadly, makes clear that it drew a clear distinction between physical and mental injuries, and opted to provide compensation only for the former under this referral. This is consistent with the distinction previously made in the December Referral Letter⁴, which specified that it covered only "claim[s] set forth as . . . claim[s] for injury other than emotional distress alone . . ."⁵ Moreover, the term "physical injury" appears in the Libyan Claims Resolution Act (LCRA)⁶, which required certification of sufficient funds in any Libya settlement to compensate for "wrongful death or physical injury," as well as the *Letter from John D. Negroponte, Deputy Secretary of State, to the Honorable Mitch McConnell, United States Senate* (July 28, 2008) ("Negroponte Letter"), which repeatedly referenced the State Department's intent to provide compensation for "wrongful death or physical injury" claims.⁷ For the Commission to award compensation for mental or psychiatric injuries would effectively erase the distinction between physical

⁴ December 11, 2008 *Letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission.*

⁵ *Id.*, ¶ 3.

⁶ Pub. L. No. 110-301, 122 Stat. 2999,

⁷ The Negroponte Letter states, in part, the following: "The other pending terrorism cases against Libya by U.S. nationals for wrongful death or *physical injury* are listed in . . . this letter. . . . In determining whether the funds are adequate . . . we intend to require amounts sufficient so that these claimants are guaranteed compensation comparable to what we understand was provided for *physical injuries* in the LaBelle Discotheque settlement . . . without requiring U.S. claimants for wrongful death or *physical injury* to prove liability by Libya or individual economic damages." (emphasis added).

and mental injuries, contrary to the intent of the Department of State, Congress, and the President as expressed in the LCRA, the Negroponte Letter, and the January Referral. Accordingly, claimant's argument on objection that the Commission should consider psychiatric injuries to be compensable as "physical injuries" under Category E of the January Referral is rejected.

Finally, at the oral hearing, the Commission noted the record of rulemaking associated with the James Zadroga 9/11 Health and Compensation Act of 2010 ("9/11 Act of 2010"). Specifically, it was noted that in the Final Rulemaking under the 9/11 Act of 2010, the Special Master—in response to comments arguing that PTSD claims should be covered under the Fund—stated that "the statute creating the Fund limits eligible injuries to those consisting of 'physical harm' ... the statutory language does not permit the Fund to cover individuals with only mental and emotional injuries."⁸ In a post-hearing submission, claimant's counsel asserted that he had spoken to the Special Master of the 9/11 Act of 2010, and that the Special Master had stated that "no medical or scientific expert opinion on the issue of whether PTSD should be considered a physical injury was presented... ." Counsel argues that since he has submitted expert testimony on this issue on behalf of the claimant in this case, the determination of the Special Master should not be relevant to the Commission's decision on the claimant's objection.

It appears that counsel misunderstood the reason why the Commission raised the conclusion of the Special Master concerning the eligibility of PTSD sufferers under the 9/11 Act of 2010. The point made by the Commission was purely textual: namely, that the text of the 9/11 Act of 2010 limited eligible injuries to those claimants alleging

⁸ *James Zadroga 9/11 Health and Compensation Act of 2010, Final Rule*, 76 Fed. Reg. 54112, 54115 (2011)

physical harm, just as the text of the January Referral Letter limits eligibility to those claimants asserting *physical* injuries. Thus, as is clear from the Final Rulemaking, the use of the word “physical” in the 9/11 Act of 2010 prompted the Special Master to give meaning to that word, for purposes of eligibility, by drawing a distinction between such injuries and mental injuries. For the same reason, the Commission has here concluded that it must attribute meaning to the State Department’s use of the word “physical,” as opposed to other possibilities —such as “personal” injuries, for example— by distinguishing between physical injuries on the one hand, and psychiatric or mental injuries on the other. Here again, claimant’s arguments, and Dr. Grasso’s opinion, do not persuade the Commission that the Department of State, in specifying “physical injury” in Category E of the January Referral, intended to include injuries that are psychiatric in nature.⁹

CONCLUSION

In summary, therefore, the Commission concludes, based on the evidence and information submitted in this claim as supplemented, that the claimant has not met his burden of proof, in that he again has not met the Commission’s standard for physical injury.¹⁰ In so holding, the Commission recognizes that the claimant may have suffered for many years from a psychiatric disorder precipitated by the Lod Airport massacre.

⁹ In this regard, the Commission notes that in the report relied upon by Dr. Grasso, the authors state that “PTSD is a *psychiatric* disorder.” Institute of Medicine, Subcommittee on Posttraumatic Stress Disorder of the Committee on Gulf War and Health: Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress, *Post-Traumatic Stress Disorder (PTSD): Diagnosis and Assessment* (2006) at 2 (emphasis added.)

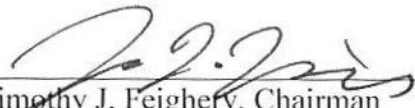
¹⁰ Section 509.5(b) of the Commission’s regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

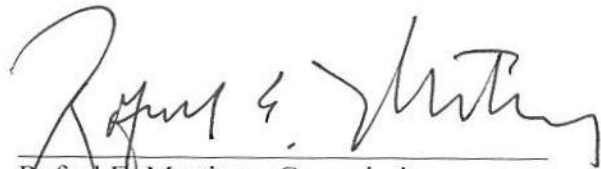
45 C.F.R. § 509.5(b) (2010).

Nevertheless, it must affirm its determination that claims based on psychiatric or mental suffering alone are not compensable as “physical injuries” under Category E of the January Referral Letter. Accordingly, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed. This constitutes the Commission’s final determination in this claim.

Dated at Washington, DC, January 25, 2012
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
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In the Matter of the Claim of

5 U.S.C. §552(b)(6)

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Counsel for Claimant:

Claim No. LIB-II-130

Decision No. LIB-II-040

Neal M. Sher, Esq.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon injuries said to have been sustained by ^{5 U.S.C. §552(b)(6)} _{5 U.S.C. §552(b)(6)} at Lod Airport in 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 Letter").

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 ("Covered Incidents"), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter ("December Referral Letter") 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 Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On July 1, 2010, the Commission received from the claimant a Statement of Claim, in which the claimant asserts a claim under Category E of the January Referral Letter, along with accompanying exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his presence at the Lod Airport in Israel on May 30, 1972, and his injuries.

According to the cover letter accompanying his Statement of Claim, the claimant, ^{5 U.S.C. §552(b)(6)} alleges that he suffers from “deep depression, anxiety and classic symptoms of post traumatic stress disorder” due to his experiences during the Lod airport incident. In support of his claim, claimant has submitted recent medical records which show a diagnosis of “major recurrent depression/post traumatic stress disorder.” The claimant has also submitted contemporaneous newspaper reports and several statements in support of his claim.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited to the category of claims defined under the January Referral Letter; namely, claims of

individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral Letter, *supra* ¶ 7.

Nationality

In *Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order for the nationality requirement to have been met, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. To meet this requirement, the claimant has provided copies of his United States birth certificate and his United States passport valid from May 2003 through May 2013. Based on this and other evidence in the record, the Commission finds that this claim was held by a U.S. national at the time of the incident upon which the claim is based and that it has been so held until the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral letter. January Referral Letter, *supra*, ¶ 7. This list includes the "May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734." *Id.*, Attachment 2, ¶ 1. In his Statement of Claim, the claimant sets forth a claim for injury suffered as a result

of this terrorist attack. Accordingly, the Commission finds that the claimant has also satisfied this element of his claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Franqui* case. Claimant has averred under oath in the Statement of Claim, and the pleadings in the *Franqui* case confirm, that he was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has satisfied this element of his claim.

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 Letter and is entitled to adjudication on the merits.

Merits

Standard for Physical Injury

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet "the standard for physical injury or wrongful death, as appropriate, adopted by the Commission" for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of* ^{5 U.S.C. §552(b)(6)}

, Claim No. LIB-II-039, Dec. No. LIB-II-015 that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and

- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

Claim of^{5 U.S.C. §552(b)(6)} *supra*, at 6-7. The present Category E claim must likewise meet this standard to be compensable.

Physical Injury

According to claimant, he was in the bathroom of the arrivals hall at the airport during the shooting, when he “saw a part of the wall rip apart from the impact of the bullets.” He states that after the incident he, along with several other passengers, was taken on a hurried tour of Jerusalem while they were in “a state of anxiety and fear for [their] lives.” The Commission notes that claimant has neither alleged nor provided evidence that he was physically injured as a result of the attack.

The claimant has, however, asserted that he suffers from “deep depression, anxiety and classic symptoms of post traumatic stress disorder” as a result of the incident. As stated above, under subsection 4(a) of the ICSEA, the Commission’s jurisdiction is limited to the category of claims defined in the January Referral Letter. Under Category E of the January Referral Letter, the Commission may only provide compensation for claims for physical injury and wrongful death. This specific reference to compensation for “physical injury” claims, and not “personal injury” claims more broadly, makes clear that the Secretary of State drew a clear distinction between physical and mental injuries, and opted to provide compensation only for the former under this referral. Thus, the January Referral Letter contemplates a distinction between the two types of injuries and precludes the Commission from compensating for anything other than physical injuries.

For the Commission to do otherwise would render the term “physical injury” (as opposed to “personal injury”) effectively meaningless.¹

Moreover, insofar as the Commission is directed to apply “applicable principles of international law” in deciding the claims before it, *see* 22 U.S.C. § 1623(a)(2) (2006), the Commission notes that the distinction between physical and mental injuries is well-established in both international conventions² and decisions of international tribunals³.

Based on the evidence and information submitted in support of claimant’s asserted injuries, and for the reasons set forth above, the Commission finds that the claimant has not met his burden of proof in this claim in that he has not satisfied the Commission’s standard for physical injury.⁴ In light of the foregoing, the Commission concludes that the claim of ^{5 U.S.C. §552(b)(6)} does not qualify for compensation under Category E of the January Referral Letter. Accordingly, while the Commission sympathizes with the claimant for the ordeal that he must have endured during the terrorist attack in question, his claims based on injuries suffered as a result of that attack must be and are hereby denied.

¹ That the term “physical injury” was intended to have a specific meaning is clear from the fact that the Referral Letter suggests that passage of the LCRA was predicated on assurances made to Congress that *physical injury* claimants would receive compensation comparable to the amount provided for *physical injuries* in the private settlement made by the Libyan government with victims of the 1986 Labelle Discotheque terrorist attack in Berlin, Germany. See December Referral Letter at pp. 1-2.

² *See, e.g.*, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, *opened for signature* Dec. 10, 1984, S. TREATY DOC. NO. 100-20, at 3-5, 19, 1465 U.N.T.S. 85; Rome Statute of the International Criminal Court, arts. 6, 7, *opened for signature* July 17, 1998, 2187 U.N.T.S. 3; Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, *entry into force* Jan. 12, 1951, Sen. Exec. Doc. 81-O, 78 U.N.T.S. 277.


³ *See, e.g.*, Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Judgment and Sentence, ¶¶ 492-494 & n.454, ¶¶ 501-501 (citing, *inter alia*, Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment, ¶ 291); Prosecutor v. Krajišnik, Case No. IT-00-39-T, Judgment, ¶ 746 (citing Prosecutor v. Delalic (“The Čelebići case”), Case No. IT-96-21-A, Judgment, ¶¶ 424, 426); Prosecutor v. Bagosora, ICTR-98-41-T, Decision on Motions for Judgment of Acquittal, ¶ 34 & n.77; South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 6, 253 (July 18).

⁴ Section 509.5(b) of the Commission’s regulations provides:

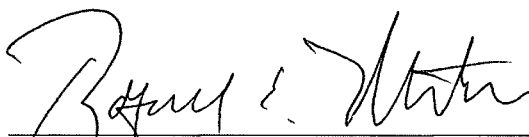
The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim. 45 C.F.R. 509.5(b) (2010).

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

Dated at Washington, DC, May 10, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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).