

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-134

Decision No. LIB-II-154

Counsel for Claimant:

Neal M. Sher, Esq.

Oral Hearing held on October 25, 2012.

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. The claim was made under Category E of the *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"). By its Proposed Decision entered May 16, 2012, the Commission denied the claim on the grounds that claimant had failed to meet the requirement of Category E that she have asserted before the Commission a claim for wrongful death or physical injury, since she had set forth a claim only for post-traumatic stress disorder ("PTSD"). In so holding, the Commission cited its repeated findings in the Libya Claims Program that claims for

psychological injury, including claims for PTSD, do not fall within the terms of Category E and are therefore ineligible for compensation under this category of the January Referral.

On July 12, 2012, the claimant filed a notice of objection and requested an oral hearing. The hearing was initially scheduled for September 14, 2012, but was postponed at claimant's request. No objection brief or additional evidence was submitted. The Commission held the oral hearing on October 25, 2012; the hearing consisted solely of argument by claimant's counsel, and counsel presented no witnesses for examination.

During the oral hearing, counsel for the claimant reiterated arguments he had made before the Commission in other similar claims involving the Lod Airport attack. Specifically, he argued that the January Referral "does not mandate the exclusion of PTSD . . . that the medical evidence and research shows that PTSD indeed . . . has physical ramifications, physical indications," and maintained, therefore, that "PTSD should be considered and categorized as a physical injury, at least for the purposes of this program."

As the Commission noted in its Proposed Decision, claims for psychological injury, including PTSD, are not compensable as a physical injury under Category E of the January Referral. *See, e.g., Claim of* ⁵ U.S.C. § 552(b)(6) , Claim No. LIB-II-128, Decision No. LIB-II-031 (2012) (Final Decision). On this basis alone, claimant's argument is unavailing, particularly in light of the fact that she has failed to submit any additional evidence to support her objection. Further, even if physical changes in the brain caused by the terrorist incident could be classified as "physical injuries" for purposes of Category E, claimant has not submitted any evidence to establish that she


experienced any physical changes to her brain. Under these circumstances, the Commission finds no basis for departing from its decision in the Proposed Decision.

For the reasons discussed above, and based on the evidence submitted in this claim, the Commission again concludes that the claimant has not met her burden of proving that she has satisfied the jurisdictional requirements for her claim.* 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.

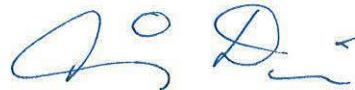
Dated at Washington, DC, December 12, 2012
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

* 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) (2011).

Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission
("January Referral").

The present claim is made under Category E. According to the January Referral, 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 lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

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).

BASIS OF THE PRESENT CLAIM

On July 1, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts a claim under Category E of the January Referral, along with exhibits supporting the elements of her claim, including evidence of claimant's U.S. nationality, her presence at the scene of the terrorist incident, and her alleged injuries for which she now claims compensation.

The claimant states that she was present in the terminal at Lod Airport in Tel Aviv, Israel on May 30, 1972, when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. Claimant asserts that she was making her way to the restroom when the attack began, at which point she rushed in and hid inside a stall, where she remained until she was called out by a police officer. Claimant alleges that, as a result of the attack, she developed post-traumatic stress disorder ("PTSD"), which persists to this day and for which she has undergone psychiatric treatment.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined under Category E of the January Referral; 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 against Libya. January Referral, *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 to meet the nationality requirement, 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 only a copy of her Puerto Rico birth certificate. No documentation establishing continuous U.S. nationality has been provided. By letter dated July 26, 2010, the Commission requested that the claimant provide evidence of U.S. nationality through the date of the Claims Settlement Agreement; however, the claimant has not done so. Because the claimant has failed to meet the nationality requirement, her claim must be dismissed on this basis alone.

Claim for Wrongful Death or Physical Injury Resulting From a Covered Incident

Even if the Commission were to have jurisdiction, moreover, it appears as though this claim would fail to satisfy the requirements necessary to make out a physical injury claim in this claims program. To fall within Category E of the January Referral, the claimant must assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral. January Referral, *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 her Statement of Claim—which claimant has left blank in the section asking her to describe her physical injury and medical treatment—and accompanying documentation, the claimant sets forth a claim only for PTSD. Nowhere does she assert that that she suffered anything other than psychological injuries.


In view of the Commission’s repeated findings in this program that claims for psychological injury, including claims for PTSD, do not fall within the terms of Category E, *see, e.g., Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-II-128, Decision No. LIB-II-031 (2012) (Final Decision), the Commission concludes that the claimant has failed to meet the requirement of Category E that the claimant have asserted a claim for physical injury.

CONCLUSION

Given that the claimant has failed to meet the jurisdictional requirements for her claim, and while the Commission sympathizes with the suffering she has endured in the years since the terrorist incident, the Commission determines that the present claim is not within the Commission's jurisdiction and therefore must be, and hereby is, denied.

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

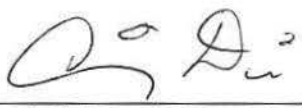
Dated at Washington, DC, May 16, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, 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) (2011).