

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-137

Decision No. LIB-II-160

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

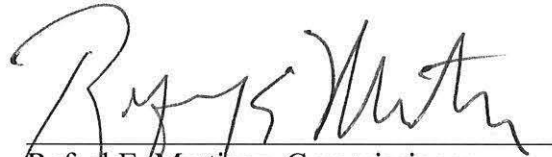
experienced any physical changes to her brain. Under these circumstances, the Commission finds no basis for departing from its decision in the Proposed Decision.

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).

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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-137

Decision No. LIB-II-160

Counsel for Claimant:

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) 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 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 at passengers gathered in the baggage claim area. Claimant, who was traveling with her husband, asserts that she was searching for other Puerto Rican passengers when the attack began, at which point she saw "people falling to the floor and others running." Not knowing the fate of her husband, she returned to where he had been waiting for their baggage and searched for him "among the dead and wounded bodies on the floor" Claimant was unable to find her husband, and eventually, she was placed in a taxi and taken to a hotel in Jerusalem. She was not reunited with her husband, who was wounded in the attack, until the following day. Claimant alleges that, as a result of the attack, she developed post-traumatic stress disorder ("PTSD"), which persists to this day.

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 copies of her Puerto Rico birth certificate, a 1993 voter registration card (valid through 2005), her current U.S. passport, and a sworn statement attesting to her continuous U.S. nationality. Based on this evidence, the Commission determines that the claim was owned by a U.S. national at the time of the incident and has been so held until the effective date of the Claims Settlement Agreement.

Claim for Wrongful Death or Physical 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. 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.¹ Indeed, in the cover letter for her initial submission, claimant, through counsel, asserts only that she suffers from “deep depression, anxiety and classic symptoms of post traumatic stress disorder” Moreover, in a September 19, 2010 email to the Commission, claimant stated, “In my particular circumstances, although I was present during the attack al [sic] Lod Airport, Tel Aviv, I was not physically injured.”²

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.

¹ During development of this claim, claimant’s counsel submitted to the Commission a translated copy of a 1974 decision of the Superior Court of Puerto Rico, San Juan Division, involving the distribution of an *ex gratia* payment from the Government of Japan intended to benefit the victims of the Lod Airport Massacre. *See Commonwealth v. Martinez*, Civil No. 73-3218 (P.R. Super. Ct. May 13, 1974). While this is not dispositive evidence of injury or otherwise, the Commission notes that, in this decision, claimant is listed among those who were “Unwounded at the Tel Aviv Massacre.” *Id.* at 22.

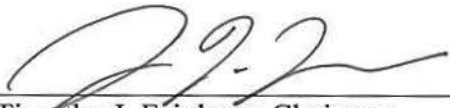
² In her email, claimant expressed that she “need[ed] to clarify some points[]” in light of the fact that counsel had filed her claim under Category E of the January Referral, which she understood to apply to those who had been physically injured.

CONCLUSION

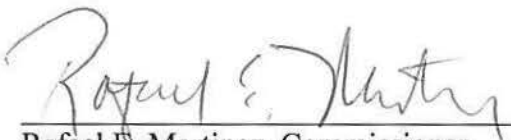
Given that the claimant has failed to meet the jurisdictional requirements for her claim, and while the Commission sympathizes with the suffering she endured during and in the years since the terrorist incident, the Commission determines that the present claim is not within the Commission's jurisdiction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