FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579

In the Matter of the Claim of	}	
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	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-088
	}	
	}	Decision No. LIB-III-019
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	
	}	

Counsel for Claimant: Steven R. Perles, Esq.
Perles Law Firm, P.C.

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on physical injuries she suffered during a terrorist attack at Fiumicino Airport in Rome, Italy on December 27, 1985. In that attack, Claimant suffered grenade shrapnel wounds to her head that required four days of hospitalization and left several shrapnel fragments embedded in her scalp. She alleges that the physical injuries she suffered during the attack also led to a displaced pituitary stalk and a pituitary tumor, conditions that were first identified in 2007, nearly 22 years after the attack. In an earlier proceeding in this program, the Commission awarded her $3 million in compensation for her injuries. She now seeks additional compensation based on the claim that the severity of her injuries is a "special circumstance warranting additional compensation." Because Claimant has failed to demonstrate that her shrapnel injuries are sufficiently severe to warrant additional compensation beyond the $3 million she has

already been awarded and because she has not met her burden to prove that the physical injuries she suffered in the attack caused either her displaced pituitary stalk or her pituitary tumor, she is not entitled to additional compensation in this program. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant was at the Fiumicino Airport[1] with her parents, brothers, and sister when terrorists launched an assault with machine guns and hand grenades inside the terminal. She states that, when the attack began, she was in close proximity to hand grenade explosions and gunfire, and that she was thrown to the ground and struck her head. Multiple pieces of shrapnel struck the left side of her head, causing her to bleed. She was taken to a local hospital and then transferred to another hospital the next day; she was eventually discharged four days after the incident. Claimant still has small pieces of shrapnel in her head and a scar marking her injuries. Moreover, she also alleges that her shrapnel injuries and/or a blow to her head when she hit the ground resulted in a displaced pituitary stalk and caused her to develop a pituitary tumor, both of which have resulted in a variety of physical symptoms that she experiences to the present day.

Along with about 25 others, Claimant sued Libya in federal court in 2006. Although the initial complaint in that lawsuit included allegations of physical harm to several of the plaintiffs, Claimant's only allegations in the suit were based on emotional injury. *See Buonocore v. Great Socialist People's Libyan Arab Jamahiriya*, No. 06–727, 2013 WL 351610, at *1 (D.D.C. Jan. 29, 2013); Amended Complaint for Compensatory & Punitive Damages, *Buonocore v. Great Socialist People's Libyan Arab Jamahiriya*,

[1] Fiumicino Airport is also known as Rome Leonardo da Vinci Airport or Leonardo da Vinci-Fiumicino Airport.

2013 WL 351610 (D.D.C. 2013) (No. 1:06-cv-727(JMF)).[2] In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims "aris[ing] from personal injury … caused by … [a] terrorist attack." *See Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* Art. I ("Claims Settlement Agreement"), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Two months later, in October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission. *See* International Claims Settlement Act of 1949 ("ISCA"), 22 U.S.C. § 1623(a)(1)(C) (2012). The Secretary delegated that authority to the State Department's Legal Adviser, who, by letters dated December 11, 2008, and January 15, 2009, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement. The first of these referral letters, the 2008 Referral, authorized the Commission to award compensation for claims of U.S. nationals against Libya for "physical injury," and in July 2009, Claimant filed a claim under the 2008 Referral for the physical injuries she allegedly sustained in the Rome Airport attack.

The 2008 Referral included several limitations on the Commission's jurisdiction. Of relevance here, the referral limited the Commission's jurisdiction to those claimants

[2] We refer to this case as the *Buonocore*/*Simpson* case after the names of the two lead plaintiffs in the two different suits that were eventually consolidated.

whose claims had been "set forth as a claim for injury *other than emotional distress alone* by a named party in the Pending Litigation . . . ." 2008 Referral at ¶ 3 (emphasis added). In the *Buonocore* and *Simpson* complaints pending at the time of the 2008 Referral, the only claim made by or on behalf of Claimant was for emotional injury. As a consequence, in a Proposed Decision dated February 18, 2010, the Commission denied the claim because Claimant had failed to show, as required by the 2008 Referral, that her claim in the *Buonocore/Simpson* case was "set forth as a claim for injury other than emotional distress alone."

The Claimant objected to the Proposed Decision on March 5, 2010, and, a little more than a year later, on April 22, 2011, she requested an oral hearing. On June 6, 2011, she requested that the Commission bifurcate further proceedings on the claim, so as to limit the oral hearing to the question of jurisdiction and issue a separate decision on the merits of her physical-injury claim. The Commission agreed to Claimant's request and held an oral hearing confined to the question of jurisdiction on July 28, 2011.

Although the Commission had not yet issued a Final Decision on the jurisdictional question, it also acceded to Claimant's request to issue a separate proposed decision on the merits. It did this in a "Supplemental Proposed Decision" dated May 17, 2012. The Supplemental Proposed Decision held that Claimant had failed to meet her "burden of proof [to] submit[] evidence and information sufficient to establish the elements necessary for a determination of the validity . . . of . . . her claim," as required by the Commission's regulations. 45 C.F.R. § 509.5(b) (2011). In particular, the Commission found her evidence insufficient to establish that she had "suffered a discernible physical injury, more significant than a superficial injury," and that the injury be verified by medical records, both of which were required under the Commission's

physical-injury standard. The Claimant objected to this decision on July 10, 2012, and requested an oral hearing, which the Commission held on September 14, 2012.

In a Final Decision issued on December 12, 2012, the Commission concluded that it lacked jurisdiction over Claimant's claim because her claim had not been "set forth as a claim for injury other than emotional distress alone" in the *Buonocore/Simpson* complaints—i.e., her Pending Litigation case—as required by the 2008 Referral. The Commission thus reaffirmed the conclusion it had reached in its original Proposed Decision on jurisdiction and determined that Claimant's claim was therefore ineligible for adjudication on the merits. As a result of this decision on jurisdiction, the Commission took no further action on the merits of her claim.

In the meantime, Claimant had also brought a separate claim for physical injury under Category E of the second State Department referral, the 2009 Referral. *See* Claim No. LIB-II-165, Decision No. LIB-II-186 (2012). Category E consisted of claims of U.S. nationals for wrongful death or physical injury where, *inter alia*, the claimant was not a plaintiff in any of the Pending Litigation cases. In its Proposed Decision on December 12, 2012, the Commission denied this claim because Claimant was in fact a plaintiff in one of the Pending Litigation cases, the *Buonocore/Simpson* case; she therefore had failed to show that her claim came within the category of claims referred to the Commission. Claimant objected to the Commission's Proposed Decision on January 10, 2013, and the Commission held an oral hearing on February 15, 2013. In a Final Decision issued February 16, 2013, the Commission affirmed its denial of the claim on jurisdictional grounds because Claimant was a plaintiff in the *Buonocore/Simpson* case.

The Legal Adviser then referred a third set of claims to the Commission on November 27, 2013. *Letter dated November 27, 2013, from the Honorable Mary E.*

McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission ("2013 Referral" or "November 2013 Referral"). Claimant filed a claim under Category A of the 2013 Referral, which comprised "claims of U.S. nationals for physical injury who had claims in the Pending Litigation, but whose claims . . . were previously denied by the Commission for failure to plead for injury other than emotional distress alone in the Pending Litigation . . . ." By Proposed Decision entered September 18, 2014, the Commission determined that Claimant was eligible for compensation under Category A and awarded her a fixed sum of $3 million. *See* Claim No. LIB-III-003, Decision No. LIB-II-004 (2014) ("Physical-Injury Decision"). In that decision, the Commission found that Claimant had proven that she suffered "wounds from shrapnel, at least some of which lodged into her skull[,]" had "received medical treatment of some kind related to that shrapnel during her four days in [local hospitals]," and had verified this injury with various medical records that "demonstrate[d] the continued presence of shrapnel embedded in Claimant's skull through all five layers of her scalp." Because the shrapnel injuries Claimant suffered at the time of the attack "suffice[d] to meet the physical-injury standard," the Commission determined that it "need not address the injuries allegedly caused by the physical head trauma she suffered from the terrorist attack – i.e., the displaced pituitary stalk and pituitary tumor (and their possible consequences)." Because Claimant did not file an objection to the Proposed Decision, the Proposed Decision automatically became the Commission's Final Decision on October 29, 2014. *See* 45 C.F.R. § 509.5 (g) (2014).

Meanwhile, on June 13, 2014, Claimant had filed a second claim under the November 2013 Referral, the claim at issue here. This claim was filed under Category D, which consists of

> claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by our January 15, 2009 referral or by this referral, provided that (1) the claimant has received an award for physical injury pursuant to our January 15, 2009 referral or this 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 claimant did not make a claim or receive any compensation under Category D of our January 15, 2009 referral.

2013 Referral at ¶ 6. Claimant's submission included extensive medical records that had already been submitted with the claims she brought under the 2008 and 2009 Referrals and incorporated by reference the evidence previously submitted with her physical-injury claim under Category A of the 2013 Referral.

DISCUSSION

Jurisdiction

The Commission must first consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the "Category D" paragraph of the 2013 Referral is limited to claims of (1) "U.S. nationals," who (2) have received an award for physical injury pursuant to the January 15, 2009 referral or this referral and (3) did not make a claim or receive any compensation under Category D of the January 15, 2009 referral. 2013 Referral ¶ 6.

Nationality

This claims program is limited to "claims of U.S. nationals." Here, that means that a claimant must have been a national of the United States continuously from the date

the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014).

In its Proposed Decision on Claimant's physical-injury claim under Category A, the Commission found that Claimant was a U.S. national from the time of the attack continuously through the effective date of the Claims Settlement Agreement. Physical-Injury Decision, *supra*, at 8. She therefore satisfies the nationality requirement here.

Prior Award

To fall within this category of claims, a claimant must have received an award for physical injury under either the January 2009 or November 2013 Referrals. The Commission awarded Claimant $3 million based on her physical-injury claim under the November 2013 Referral. Claimant has thus satisfied this element of her Category D claim.

No Claim Under Category D of the January 2009 Referral

With respect to the final jurisdictional requirement, Claimant did not make a claim or receive any compensation under Category D of the January 2009 Referral. Therefore, Claimant meets this element of her claim as well.

In summary, this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

Standard for Special Circumstances Claims

To make out a substantive claim under Category D, a claimant must establish that the severity of his or her injury is a "special circumstance warranting additional

compensation." 2013 Referral ¶ 6.[3] The Commission has previously drawn on decisions from the January 2009 Referral to determine what constitutes a "special circumstance" in this program. The 2009 Referral decisions, made pursuant to the same Libyan Claims Settlement Agreement and involving the same terrorist attacks, addressed the exact same question as that presented here, whether the severity of a victim's injuries constitutes a "special circumstance warranting additional compensation." The Commission adopted the same standard that it applied under the 2009 Referral and held that in determining whether the severity of a victim's physical injuries is a "special circumstance warranting additional compensation" under Category D of the 2013 Referral, the Commission would consider three factors: "[(1)] the nature and extent of the injury itself, [(2)] the impact that the injury has had on a claimant's ability to perform major life functions and activities—both on a temporary and on a permanent basis—and [(3)] the degree to which the claimant's injury has disfigured his or her outward appearance." Claim No. LIB-III-021, Decision No. LIB-III-016, at 7 (Proposed Decision).

Importantly, in all of its "additional compensation" decisions under the 2009 Referral (and its 2013 Referral "additional compensation" decisions so far), the Commission addressed these three factors in light of the unique context of the Commission's Libyan claims programs, under which every successful physical-injury claimant received an initial award of $3 million. Thus, while noting that no amount of money can adequately compensate some victims for their injuries, the Commission also recognized that $3 million is "exceptionally high when compared to other claims

[3] Strictly speaking, Category D provides *two* ways for a claimant to make out a substantive claim: the claimant must show either (1) that "the severity of the injury is a special circumstance warranting additional compensation," or (2) that "additional compensation is warranted because the injury resulted in the victim's death." *See* 2013 Referral ¶ 6. Since the Claimant survived the Rome Airport attack, only the first is relevant here.

programs . . . ." *See* Claim No. LIB-II-110, Decision No. LIB-II-111, at 5 (2011). For that reason, the Commission emphasized that "the eligible claimants in [the Libya claims] program [had], for the most part, been adequately compensated . . . ." *Id.* at 6. Starting from that premise, the Commission held that only the most severe injuries would constitute a special circumstance warranting additional compensation under Category D. As discussed below, Claimant has not made the required showing, and she is thus not entitled to additional compensation under the November 2013 Referral beyond the $3 million the Commission has already awarded her.

Factual Allegations

Claimant alleges that she was sitting with her family in the Fiumicino Airport's food-court area near the TWA and El Al Airlines ticket counters when terrorists opened fire with machine guns and tossed hand grenades within 30 feet of where she and her family were seated. She was six years old at the time. Claimant states that, "[w]hen the attack started, [she] was very near to loud hand grenade explosions and gunfire[,] . . . was thrown to the ground, and hit [her] head on the ground." She further states that "[m]ultiple pieces of hand grenade shrapnel struck the back left side of [her] head." Claimant alleges that the shrapnel "cut into [her] head, causing [her] to bleed substantially . . . ." Her two brothers (aged eight and twelve at the time) confirm this in affidavits submitted as part of her claim.

Claimant states that, after the attack, she was taken by ambulance to San Agostino Hospital (now known as G.B. Grassi Hospital) in Rome. Her mother and brothers accompanied her in the ambulance; one of her brothers states in his affidavit that Claimant "had a deep gash in the back of her head, from which most of the blood was flowing, and she had a number of other cuts and bruises on her head in the same area."

Claimant states (and both of her brothers confirm) that she was admitted to the surgery department at San Agostino and remained there for approximately 24 hours. She was then transferred to the CTO (Centro Traumatologico Ortopedico) Alesini Hospital, also in Rome, and was admitted for further treatment. Claimant states that the doctors at CTO Alesini "took x-rays of [her] head, removed some of the shrapnel from [her] head, and treated and sutured [her] wounds." Claimant was discharged from the hospital on December 31, 1985, four days after the attack.

Injuries Alleged: Claimant alleges that "as a result of the Rome Airport Attack [she has] suffered a severe permanent injury, received and continue[s] to receive medical treatment for the injuries[,] . . . and [has] suffered permanent life altering problems." She asserts that the severity of her injuries is a "special circumstance" warranting additional compensation in this Libya claims program. Her injuries fall into two categories: shrapnel injuries/scarring and hyperprolactinemia/pituitary injuries.

First, she states that shrapnel remains lodged in her head, including one piece lodged in her skull, and cites statements by her physicians that the risks of removing the shrapnel outweigh the benefits. She further states that she has "some permanent scarring on [her] head[,]" which is "covered by [her] hair," but that the "scar tissue can be felt with palpation, which is painful." The color of the scar, however, "has faded to resemble the color of the surrounding skin."

In addition to the shrapnel injuries, Claimant also alleges that she suffers from hyperprolactinemia, a hormone condition marked by "[e]levated levels of prolactin[4] in the blood," *Stedman's Medical Dictionary* 926 (28th ed. 2006). There appear to be

[4] Prolactin is a "hormone that causes a woman's breasts to make milk during and after pregnancy." *General Information About Pituitary Tumors*, Nat'l Cancer Inst., http://www.cancer.gov/cancertopics/pdq/treatment/pituitary/Patient/page1 (last updated Mar. 11, 2015).

several possible causes of hyperprolactinemia, and Claimant alleges two of them, a displaced pituitary stalk and a pituitary tumor.[5] She further claims that it was the terrorist attack that caused both the displaced pituitary stalk and the pituitary tumor: the "physical head trauma" she is said to have sustained during the attack allegedly led to the displaced pituitary stalk, and "a combination of the physical trauma to [her] head, the horror [she] experienced as a 6 year old in the Attack, and the post-traumatic stress of the Attack" is what is said to have caused the pituitary tumor.

Further, Claimant alleges that the hyperprolactinemia has caused her to suffer numerous debilitating symptoms. She says that "the displaced stalk and tumor have caused very painful and humiliating physical symptoms, such as chronically and permanently elevated levels of the hormone prolactin, uncontrollable and humiliating lactation unrelated to pregnancy, painful headaches, dramatic weight fluctuations, obesity and insomnia." She claims that "[t]hese are permanent conditions that reduce [her] quality of life on a daily basis." Claimant further states that she takes medication to control the symptoms of hyperprolactinemia, but that the medication "does not make the symptoms disappear." She further alleges that her abnormal and fluctuating levels of prolactin have rendered her infertile.

Supporting Evidence

Claimant has supported her claim with, among other things, her own affidavits (dated August 18, 2012 and May 13, 2014); two unsworn, detailed first-person narratives recounting her experience during the terrorist attack and her resulting injuries; recent affidavits from her brothers (dated June 5 and June 7, 2011, and January 14 and February

[5] The pituitary is "a pea-sized organ in the center of the brain" and is an important gland in the body's hormonal (or endocrine) system. *General Information About Pituitary Tumors*, *supra* note 4.

13, 2012); and extensive medical records, both contemporaneous with the attack and more recent, along with various medical reports and expert opinions.

Shrapnel Injuries: The Commission discussed Claimant's shrapnel injuries and the evidence she submitted in support of those injuries in great detail in its decision on Claimant's physical-injury claim in this program. *See* Physical-Injury Decision, *supra*, at 13-23. The medical records supporting her claim included evidence of both the shrapnel itself and of scarring. Specifically, the evidence included references to shrapnel in the contemporaneous Italian hospital records from 1985, as well as recent radiological images and expert medical reports stating that shrapnel (consisting of two pieces at least 1 centimeter in length) remains in her head and that the shrapnel is deep enough that to remove it surgically would pose greater risks to than to leave it there.

The medical records also contain evidence of Claimant's scarring said to be the result of her shrapnel injuries. Reports from two different doctors mention the scarring. The first is a report of a physical examination conducted by Adel Haddad, M.D.,[6] in April 2010 in Amman, Jordan. The Haddad report indicates that Claimant has "wounds [which] appear as soft scarring (approximately 2 cm x 2 cm) in the parietal occipital region of her head, all of which is consistent with . . . hand grenade shrapnel wounds." Dr. Haddad also notes that "[t]he scarring is palpable to touch, and visible to the unaided eye, though partly obscured by hair making it difficult to photograph . . . ." The second report is from a separate examination the same month by M.A. Arnaout, M.D., an endocrinologist also in Amman, and it similarly indicates that Claimant "has permanent scarring . . . consistent with physical injury from hand grenade shrapnel as reported."

[6] In her exhibit list, Claimant refers to Dr. Haddad as a plastic surgeon.

Displaced Pituitary Stalk and Pituitary Tumor: The medical records also contain evidence that Claimant has a displaced pituitary stalk and a pituitary tumor. A magnetic resonance imaging (MRI) report produced in September 2007 at the Al-Khalidi Medical Center in Amman notes "[e]vidence of about [5.5 mm] in diameter hypointense lesion seen in the adenohypophysia[7] on the right side . . . ." It also notes that "[t]he pituitary stalk is slightly displaced to the left." Another report from the same facility, produced three months later in December 2007, indicates that there is a "rounded focal hypointensity at the Rt aspect of the pituatery [sic] gland, measuring about 5 mm." It also notes that "[t]he infundibulum[8] is slightly shifted to the left side." In both reports, the other structures of the pituitary gland appear normal.

Dr. Arnaout's 2010 medical report also addresses the presence of a pituitary tumor. He indicates that his examination of the 2007 MRI film and report "confirm[s] that [Claimant] has a 4-5 mm pituitary tumor[,]" and that "[s]uch tumors typically cause headache and irregular menses." Dr. Arnaout also opines that Claimant's shrapnel injuries from the Rome Airport attack "may have a role in the formation of the pituitary adenoma[9]. . . ."

Claimant has also provided a medical report, dated August 22, 2012, from Robert J. Cooper, M.D., a board-certified endocrinologist, who has reviewed Claimant's medical records, affidavits, and other expert opinions, and who met with Claimant as part of his evaluation. Dr. Cooper confirms, based on blood laboratory analyses from the years

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[7] "Hypophysis" is another term for the pituitary gland. *See* Henry Gray, *Anatomy of the Human Body* 1601 (Carmine D. Clemente ed., 30th Amer. ed. 1985). The "adenohypophysis" (or glandular portion) is the larger of the two main parts of the hypophysis. *Id*. at 1602.

[8] The "infundibulum" is another term for the pituitary stalk, which connects the pituitary gland to the hypothalamus. *See id.* at 1601.

[9] An "adenoma" is a "benign, noncancerous tumor arising from the epithelium (cell layer lining the inner surface) of any gland . . . ." Am. Med. Ass'n, *Encyclopedia of Medicine* 68 (Charles B. Clayman ed., 1989).

2007 to 2011 (previously provided to the Commission in connection with Claimant's 2008 Referral claim), that Claimant suffers from hyperprolactinemia and that she exhibits the "classic symptoms" of this condition (e.g. galactorrhea,[10] headaches, insomnia, weight and water retention issues). He further states that "[h]yperprolactinemia is caused by a displacement of the pituitary stalk, excess production of prolactin from a pituitary gland tumor, or both." Dr. Cooper also confirms, based on his review of the 2007 MRI reports, that Claimant has a "displaced pituitary stalk (>2.5mm to the right of midline), which is a clinically significant displacement capable of causing hyperprolactinemia, and is itself a form of traumatic brain injury." In addition, he confirms that Claimant "has a pituitary tumor (a 5.5mm adenoma) capable of causing hyperprolactinemia."

Dr. Cooper indicates that Claimant is taking Dostinex for her hyperprolactinemia symptoms, but that when she stops taking it, her "prolactin levels spike[,]" and the symptoms return. He therefore concludes that Claimant "has a displaced pituitary stalk and a pituitary tumor that are in combination causing her hyperprolactinemia and the various physically and psychologically debilitating symptoms that she has reported."

Dr. Cooper also purports to rule out various causes of Claimant's pituitary conditions other than the 1985 terrorist attack. Relying solely on Claimant's 2012 affidavit, he states that Claimant "has no family history of displaced pituitary stalk, pituitary tumor, pituitary disease or disorder, or hyperprolactinemia." Similarly relying solely on Claimant's affidavit, he further states that she has "no history of head injury" or "intense trauma" apart from the Rome Airport attack. Based on this, he concludes that he can "rule out, to a reasonable degree of medical certainty, the other two most probable potential causes of the displaced pituitary stalk (heredity and an alternate head injury) and

[10] Galactorrhea is "[a]ny white discharge from the nipple that is persistent and looks like milk." *Stedman's Medical Dictionary* 782 (28th ed. 2006).

the other three most probable potential causes of the pituitary tumor (heredity, an alternate head injury and an alternate traumatic event inducing post-traumatic stress)." Based on blood laboratory analysis, he further excludes "dysfunction of the kidney, liver and thyroid—which are also possible alternate causes of the pituitary tumor."

In addition, Dr. Cooper contends that the force of Claimant's shrapnel head injury was "sufficient to displace the pituitary stalk by 2.5 mm . . . ." Relying solely on affidavits from Claimant and one of her brothers, Dr. Cooper further states that "[t]here is also evidence of a blow to the head caused by contact with the ground, and acoustic trauma, which reinforces the causal link between the head injury and the attack on the one hand, and the displaced stalk on the other, but is not necessary in order to establish it." On this basis, Dr. Cooper concludes that "the head shrapnel injuries sustained by [Claimant] in the terrorist attack caused her displaced pituitary stalk."

Dr. Cooper also states that the psychological impact of the Rome Airport attack is just as likely to have played a role in the development of Claimant's pituitary tumor as the physical injuries. Again relying solely on the affidavits (and a single meeting with Claimant), Dr. Cooper asserts that Claimant was "psychologically and emotionally traumatized" by the Rome Airport attack and that her "long-term reactions . . . show that she has experienced intense post-traumatic stress."[11] He adds the following: "Each of the physical stress (the physical head injuries) and the post-traumatic stress is independently sufficient to impact the neuroendocrine axis at a molecular level in a way that results in tumor formation." Dr. Cooper therefore concludes that "[Claimant's] head injuries . . . and her associated post-traumatic stress[] caused her pituitary tumor."

[11] Dr. Cooper is not a psychiatrist and is board-certified only in endocrinology and internal medicine. Additionally, there is no evidence in the record that Claimant has ever been diagnosed with post-traumatic stress disorder or any other psychological injuries from the terrorist attack.

Dr. Cooper also opines on the nearly 22-year gap between Claimant's initial injuries and the discovery of Claimant's pituitary tumor. He states that pituitary tumors "can be slow to emerge, and difficult to detect." He makes the same assertion about the displaced pituitary stalk. In both cases, he states that this is because symptoms can be slow to emerge and can be confused with other conditions. He claims that the "delay in diagnosis is typical, and does not diminish the causal connection between [Claimant's] head injuries and her tumor and displaced stalk."

Dr. Cooper also states that there is no surgery to repair the displaced pituitary stalk, and that, although surgery could be performed to remove the pituitary tumor, this would include risks that outweigh the risks of continuing on medication. He adds that while Dostinex can control the symptoms of hyperprolactinemia, "it cannot be expected to eliminate them altogether."

Finally, in support of his conclusions, Dr. Cooper cites published medical studies addressing the connection between head trauma and the development of pituitary tumors. He cites one article in particular[12] in which, according to Dr. Cooper, "[pituitary] hormone disruption has been reported in up to 69% (two-thirds) of persons with traumatic brain injury such as a displaced pituitary stalk . . . . This included . . . prolactin elevation thought to be secondary to injury effects on the pituitary stalk . . . ." In sum, Dr. Cooper concludes that Claimant's head injuries in the Rome Airport attack "caused her displaced pituitary stalk . . . [and] that a combination of the head injuries and the post-traumatic stress . . . caused her pituitary tumor, and that the displaced stalk and tumor in turn have caused her hyperprolactinemia and its debilitating physical and psychological symptoms."

[12] *See* Micol S. Rothman, M.D., et al., *The Neuroendocrine Effects of Traumatic Brain Injury*, 19(4) J. Neuropsychiatry & Clinical Neurosciences 363-372 (Fall 2007) ("Rothman article").

Dr. Cooper submitted a brief follow-up letter to his initial report a few weeks later, in September 2012. In it, he supplements his August report by stating, *inter alia*, that the "2.5 mm displacement is a very significant displacement in the pituitary stalk that can only have been caused by the significant physical head trauma [Claimant] sustained in the airport attack, where other reasonably possible causes have been excluded . . . ."

Finally, Claimant has also submitted a medical report, dated June 13, 2011, from Carl Warren Adams, M.D., a cardiovascular and thoracic surgeon, which contains conclusions similar to those found in Dr. Cooper's reports. The Commission previously considered Dr. Adams's report in its Supplemental Proposed Decision under the 2008 Referral; the Commission gave it little weight, however, because it did not adequately establish causation, and because Dr. Adams "[was], in fact, not an endocrinologist[,]" but rather "a cardiovascular and thoracic surgeon, and d[id] not appear to be board-certified in endocrinology or radiology." Supplemental Proposed Decision, *supra*, at 12.

Application of Special Circumstances Factors to Evidence

Claimant's argument focuses on both groups of injuries she says resulted from the Rome Airport attack: the physical shrapnel injuries suffered as a direct result of the attack, and the displaced pituitary stalk and pituitary tumor first diagnosed in 2007. We address the two in turn. In doing so, we are mindful that, in making award determinations for additional compensation, we must take into account the severity of the injuries of all the claimants who have sought additional compensation in these Libyan claims programs. *See* Claim No. LIB-II-110, *supra*, at 5. Moreover, "to the extent that a monetary award can ever adequately compensate for a physical injury," the Commission views these claims for additional compensation through the lens of the $3 million previously awarded to Claimant (and all successful claimants in this program) -- an

amount that is "exceptionally high when compared to other programs." *Id.* Seen through that lens, Claimant's evidence is insufficient to meet her burden to prove that the severity of her physical injuries is a "special circumstance" warranting additional compensation in this claims program.

Shrapnel Injuries: In its decision on Claimant's physical-injury claim, the Commission reviewed all of the evidence related to Claimant's shrapnel injuries and concluded that Claimant had proven that she suffered a compensable physical injury. Specifically, the Commission found that

> [Claimant] (1) suffered . . . wounds from shrapnel, at least some of which lodged into her skull; (2) received medical treatment of some kind related to that shrapnel during her four days in the San Agostino and CTO Alesini hospitals; and (3) has verified the shrapnel injury with [medical records] which demonstrate the continued presence of shrapnel embedded in Claimant's skull through all five layers of her scalp.

Physical-Injury Decision, *supra*, at 24-25. The Commission also credited medical evidence stating that the remaining shrapnel (consisting of two pieces at least 1 centimeter in length each) was deep enough in Claimant's head that to remove it surgically would pose greater risks than to leave it there. Although the Commission found that the evidence was inconclusive as to the type of medical care Claimant received immediately after the incident, it nonetheless concluded that "she most likely required some kind of medical care during that four-day period, care that was likely related to shrapnel in her head." *Id.* at 23.

Applying the three factors to Claimant's shrapnel injuries, we conclude that the severity of those injuries is not a "special circumstance" warranting additional compensation. First, while we sympathize with the fear Claimant undoubtedly felt as a six-year old during the Rome Airport attack, her injuries themselves do not rise to the level of severity that warrants additional compensation when viewed in light of the nature

and extent of the injuries suffered by all the claimants who have sought additional compensation in these Libyan claims programs. While Claimant did suffer lacerations on her scalp from small pieces of shrapnel, she was hospitalized for only four days, and there is no evidence of any major surgery. The record is also devoid of evidence of any subsequent medical care for these wounds.

When compared with some of the horrendous physical injuries other victims from the Libyan claims program suffered, Claimant's injuries do not qualify as a "special circumstance" warranting compensation beyond the $3 million she has already been awarded. Indeed, the Commission has previously denied additional compensation to other claimants whose physical injuries were far worse than Claimant's shrapnel wounds, including one claimant who had bullet wounds to his chest, buttocks and leg; had spent eight days (twice as long as Claimant) in the hospital after the terrorist attack; and had medical records showing continued pain in his lower leg, thigh and back for the first few years after the attack. *See* Claim No. LIB-II-148, Decision No. LIB-II-185 (2012); *see also* Claim No. LIB-II-109, Decision No. LIB-II-112 (2011) (denying claim for additional compensation where the claimant suffered bullet wounds to her right foot with entry and exit wounds, requiring ten days in the hospital and immediate surgery); Claim No. LIB-II-110, *supra* (denying claim for additional compensation where the claimant suffered a through and through gunshot wound to the chest, requiring four days of hospitalization and a course of antibiotics, and which left a 3-inch scar on his chest).

The second and third factors provide further support for this conclusion: none of Claimant's major life activities have been limited in a significant way as a result of the shrapnel injury, nor has there been any significant disfigurement to her outward appearance. Claimant has not provided any evidence of disability due to the shrapnel,

and although there is evidence of permanent scarring on her head, the scar is relatively small (2cm x 2cm) and is covered by Claimant's hair. Moreover, Claimant states that "the color of the scar has faded to resemble the color of the surrounding skin." In sum, the severity of Claimant's shrapnel injuries does not rise to the level of a special circumstance warranting additional compensation under Category D.

Displaced Pituitary Stalk/Pituitary Tumor: Claimant has failed to meet her burden to prove that the physical injuries she suffered in the Rome Airport attack caused either her displaced pituitary stalk or her pituitary tumor. She has thus failed to prove that any of her physical injuries from the attack was the legal cause of any of her pituitary problems, including hyperprolactinemia and any of the other symptoms associated with the displaced pituitary stalk and pituitary tumor. The Commission thus need not decide whether the severity of those injuries would, if proven, constitute "a special circumstance warranting additional compensation" under the Commission's standard for such claims.

In its Supplemental Proposed Decision on Claimant's 2008 Referral claim, the Commission held that Claimant had failed to prove that her pituitary tumor was caused by the Rome Airport attack. This conclusion was based largely on the same evidence that is before the Commission in this claim. On objection from that Supplemental Proposed Decision, however, Claimant submitted additional evidence on this issue, most notably Dr. Cooper's written opinions. Because the Commission lacked jurisdiction on Claimant's 2008 Referral claim, the Commission had no occasion to consider Claimant's additional evidence on this issue. Therefore, the Commission must now determine whether this new evidence suffices to overcome the shortcomings identified in the Supplemental Proposed Decision. We conclude that it does not.

To begin, the Commission finds that the evidence is sufficient to establish that Claimant does in fact have certain medical conditions. She has a pituitary tumor, and her pituitary stalk is displaced. We also find that she suffers from hyperprolactinemia.

In light of these findings, the threshold question here is whether Claimant has met her burden to show that the terrorist attack in 1985 was the legal cause of her hyperprolactinemia (or any of the symptoms said to be due to her hyperprolactinemia). There are two important steps in the causal chain between the terrorist attack and Claimant's injuries: (1) whether the terrorist attack caused her displaced pituitary stalk and/or pituitary tumor; and (2) whether Claimant's pituitary stalk displacement and/or her pituitary tumor caused her hyperprolactinemia (or any of its associated symptoms). Because we conclude that Claimant has failed to prove that the terrorist attack caused either her displaced pituitary stalk or her pituitary tumor, we need not address the question of what exactly caused her hyperprolactinemia (or any of its associated symptoms).

To prove causation, Claimant relies on the opinions of various physicians with whom she has consulted. Of the medical records provided with this claim, Dr. Cooper's reports provide the greatest detail on the alleged causal connection between the attack and Claimant's pituitary conditions, and, as noted above, they are the primary pieces of new evidence on this issue submitted since the Supplemental Proposed Decision on Claimant's 2008 Referral claim. So we focus on Dr. Cooper's reports.

Dr. Cooper speaks to both steps in the causal chain. He contends that hyperprolactinemia can be caused by a displaced pituitary stalk, a pituitary tumor, or both, and he in turn attributes both of these conditions to Claimant's shrapnel injuries

and/or to her having hit her head on the ground during the attack.[13] As noted above, we focus on whether the evidence establishes that the terrorist attack is the legal cause of either the displaced pituitary stalk or the pituitary tumor.

Displaced Pituitary Stalk

Dr. Cooper's conclusion that Claimant's displaced pituitary stalk could only have been caused by the physical injuries she suffered in the Rome Airport attack rests on numerous questionable assumptions. To start, he identifies heredity as one of the "most probable potential causes" of the displaced stalk, and yet he excludes heredity as the cause (or one of the causes) based solely on Claimant's own statements, statements made in an affidavit prepared specially for this claim, not in the ordinary course of a routine medical examination. There is no medical evidence in the record about Claimant's heredity. Dr. Cooper also excludes the possibility of another incident of head trauma based again solely on assertions Claimant made specifically in the context of this claim. Yet, the record contains no medical records from January 1986 until September 2007. Where a witness has no documentary evidence of Claimant's medical history and no genetic information beyond a self-reported family history, a claim that a 1985 trauma caused a displaced pituitary stalk that was not diagnosed until nearly 22 years later without any medical evidence from the intervening period is insufficient to show the alleged causal connection.

In addition, both conclusions assume that Claimant did not have a displaced pituitary stalk *before* the Rome Airport attack, either due to heredity, some pre-attack

[13] Dr. Cooper's report includes references to research indicating that traumatic brain injuries can cause pituitary tumors. He uses this to support his opinion that Claimant's displaced pituitary stalk (which Dr. Cooper says *is*, in and of itself, a traumatic brain injury) could have caused Claimant's pituitary tumor and/or hyperprolactinemia. Since we conclude that Claimant has failed to meet her burden to prove that the Rome Airport attack caused her displaced pituitary stalk, we need not address this contention.

trauma or some other cause. Without more, therefore, Claimant's evidence is insufficient to prove that she did not have a displaced pituitary stalk before the attack.

Dr. Cooper relies not only on the testimonial evidence from Claimant suggesting that she hit her head, but also the shrapnel itself as evidence that the physical trauma could have caused the displacement of Claimant's pituitary stalk. He states that the "shrapnel head injury . . . is by itself sufficient to displace the pituitary stalk by 2.5mm to the right of midline." One problem with this statement is that the medical records contain no evidence about the force of the impact. While the medical records are clear that pieces of shrapnel were lodged in Claimant's scalp, there is no indication (besides the presence of the shrapnel itself) that the injury involved force sufficient to cause any trauma beyond the injury to her scalp; the medical records contain no reference to such injury (*e.g.*, concussion, skull fracture, brain swelling, etc.), and the medical records make no mention whatsoever of a fall to the ground resulting in any head injury. Given this lack of evidence about any impact or head trauma at the time of the terrorist attack, combined with the lack of factual evidence about other possible causes (such as heredity or other traumas) and the fact that the displaced pituitary stalk was not diagnosed until more than two decades later, Claimant has failed to establish that her 1985 injury involved enough force to cause a displaced pituitary stalk. We do not conclude that this causal link is impossible, only that Claimant has failed to provide enough evidence to prove it.

Pituitary Tumor

Dr. Cooper's conclusion that the Claimant's pituitary tumor was caused by the attack also rests on a number of assumptions that are unsupported by any concrete evidence. To start, Dr. Cooper fails to acknowledge what appears to be considerable

uncertainty in the medical community about the causes of pituitary tumors in general. In particular, several reliable medical sources state that the causes of pituitary tumors are unknown. *See Do We Know What Causes Pituitary Tumors?*, *Pituitary Tumors*, Am. Cancer Soc'y, http://www.cancer.org/cancer/pituitarytumors/detailedguide/pituitary-tumors-what-causes (last updated May 8, 2014) ("Scientists don't know exactly what causes most pituitary tumors."); *Pituitary Tumors*, MayoClinic.com, http://www.mayoclinic.org/diseases-conditions/pituitary-tumors/basics/causes/con-20028814?p=1 (Nov. 14, 2012) ("The cause of uncontrolled cell growth in the pituitary gland, creating a tumor, remains unknown."); U.S. Nat'l Library of Med., Nat'l Insts. of Health, *Pituitary Tumor*, http://www.nlm.nih.gov/medlineplus/ency/article/000704.htm (last updated Nov. 7, 2013) ("The causes of pituitary tumors are unknown."). In and of itself, this medical uncertainty does not of course speak directly to the cause of Claimant's pituitary tumor, but Dr. Cooper's starting point—that the three most probable causes of a pituitary tumor are heredity, a head injury, or some other traumatic event—raises serious questions. Without more medical support, we cannot accept even this initial premise.[14]

Even if we accepted Dr. Cooper's starting premise that the "three most probable causes of the pituitary tumor" (other than the terrorist attack) were "heredity, an alternate head injury and an alternate traumatic event inducing post-traumatic stress," Dr. Cooper's claim that he can "rule out, to a reasonable degree of medical certainty" those three other

[14] As an endocrinologist, Dr. Cooper's field is the body's endocrine (hormone) system, not the causes of pituitary tumors. He may be able to opine on, for example, the relationship between a pituitary tumor and Claimant's elevated hormonal levels (i.e., the relationship between the pituitary tumor and the endocrine system itself), but Dr. Cooper does not appear to have expertise on the question before us, the etiology of the tumor in the first place. His written submission states that he has "publication on pituitary disease," but none of the publications he lists on his CV involve research into the *causes* of pituitary tumors. Given Dr. Cooper's apparent unfamiliarity with what appears to be the lack of medical consensus on the causes of pituitary tumors, we are forced to question whether Dr. Cooper has the expertise even to opine on the causes of Claimant's pituitary tumor.

causes is also problematic. Just as with the displaced pituitary stalk, Dr. Cooper excludes the possibility of heredity based solely on Claimant's assertion that she has no family history of pituitary tumors. There is no medical evidence to support this assertion—only Claimant's own statements, statements that she made not in the context of a medical examination, but rather in an affidavit specially prepared in 2012 for her initial physical-injury claim before the Commission.

Moreover, some sources indicate that pituitary tumors are in fact commonly found in the general population—by some estimates up to one-quarter of people have them—and are never diagnosed; a pituitary tumor does not necessarily lead to elevated hormonal levels or any symptoms at all. *See* U.S. Nat'l Library of Med., *supra*; *Pituitary Tumors: General Questions*, Pituitary Soc'y, http://www.pituitarysociety.org/public/faq/pituitarytumour(general)faq.aspx (last visited May 12, 2015); *Pituitary Tumors*, Am. Cancer Soc'y, http://www.cancer.org/acs/groups/cid/documents/webcontent/003133-pdf.pdf (last revised Dec. 17, 2014). Thus, even if Claimant were correct that her family has no history of the *symptoms* that she appears to have experienced from her pituitary tumor, that does not mean her family has no history of pituitary tumors. Furthermore, even if Claimant correctly stated that she has no family history of pituitary tumors, that would not eliminate the possibility of genetic factors. Claimant might still have genes associated with an increased risk of a pituitary tumor. Yet, Dr. Cooper eliminated heredity as a possible cause without any medical evidence of Claimant's genetic background (such as, for example, genetic testing for heredity risk factors). This raises serious questions about Dr. Cooper's ability "to rule out [heredity] to a reasonable degree of medical certainty."

In addition, Dr. Cooper has excluded all other instances of trauma, again based solely on Claimant's own recent statements. However, because Claimant has provided no medical records (or any other evidence) from the nearly 22-year period from January 1986 until September 2007, she has failed to meet her burden to establish that the terrorist attack was the only possible (or even, the most probable) cause of her pituitary tumor. Indeed, in addressing potential alternative causes, Dr. Cooper appears to have relied almost entirely on Claimant's own statements made after the filing of her initial claim before this Commission. Given the length of time that has passed, and the uncertainty about what causes pituitary tumors in general, Dr. Cooper's medical report and all of Claimant's other evidence are insufficient to meet Claimant's burden to show that the terrorist attack caused her pituitary tumor.

Dr. Cooper attempts to explain the lack of any medical evidence for more than two decades by indicating that "[a] pituitary tumor . . . can be slow to emerge, and difficult to detect . . . because it may take years for the chemical changes triggered in the brain by head injury and associated post-traumatic stress to precipitate a tumor." He further notes that "the symptoms . . . may themselves be slow to emerge, and when they do . . . they are easily misunderstood . . . ." Even assuming this to be true, a gap of more than two decades between the incident and the first diagnosis of hyperprolactinemia is substantial here, heightening the importance of eliminating all other potential causes before concluding that the 1985 attack even played any role in Claimant's pituitary tumor, let alone one that we could conclude was a legal cause of that tumor.

In a June 19, 2011 affidavit, Claimant suggests that some of her symptoms predate 2007. She states that certain symptoms "appeared over time after the attack, some of them starting soon after the attack and others appearing later." The problem is,

however, that she does not indicate which symptoms or when. Nor does she provide any medical records (or even any other contemporaneous documentation) to substantiate this claim. Indeed, despite claiming that the symptoms started soon after the incident, there is no evidence that Claimant sought any medical attention whatsoever until 2007. Under these circumstances, Claimant's own statements are insufficient to meet her burden to show that the attack caused her pituitary tumor.

Finally, even if we were to accept all of Claimant's statements and all of Dr. Cooper's conclusions that it was the terrorist attack that caused Claimant's pituitary tumor, Claimant would still not have met her burden here, because the evidence leaves open the possibility that Claimant's psychological injuries from the attack could have caused her tumor. When determining whether the severity of Claimant's "injury" is a special circumstance, the only "injury" we can consider is her *physical* injury. Claims for psychological injury, including PTSD, were not compensable as a physical injury under the 2008 and 2009 Referrals,[15] and because the 2013 Referral derives from the same Settlement Agreement and other authorizing documents, the same principle applies to physical-injury claims under the 2013 Referral.

Here, Dr. Cooper indicates that the pituitary tumor and hyperprolactinemia may have been caused by psychological trauma. Further, he indicates that Claimant's tumor is just as likely to have been caused by the psychological effects of the attack as by the physical injuries she suffered in the attack: "Each of the physical stress (the physical head injuries) and the post-traumatic stress is independently sufficient" to cause a pituitary tumor. If PTSD or any other psychological factor caused Claimant's pituitary tumor, that tumor (and any other injuries stemming from it) would not be compensable in

[15] *See, e.g.*, Claim No. LIB-II-137, Decision No. LIB-II-160 (2012); Claim No. LIB-I-033, Decision No. LIB-I-046 (2011); Claim No. LIB-II-109, Decision No. LIB-II-112 (2011).

this program. Thus, even if Claimant had shown that the attack caused her pituitary tumor, her evidence that the psychological injuries she suffered is just as likely to have caused the tumor as the physical injuries renders her ineligible for additional compensation based on this condition.

Given the passage of time—in this case, almost 22 years—Claimant bears a heightened burden to establish that it was the physical injuries she sustained in the Rome Airport attack in 1985 that caused her pituitary tumor (or the hyperprolactinemia that the tumor in turn is said to have caused). The questions about the causal claims in Dr. Cooper's report, the apparent uncertainty regarding the causes of pituitary tumors in the medical community, and Dr. Cooper's own conclusion that psychological factors could have been the cause of Claimant's tumor, all raise doubt about whether physical injuries from the attack were the cause of her pituitary tumor. Claimant has thus failed to satisfy her burden to show that her pituitary tumor (or the hyperprolactinemia that the tumor is said to have caused) is the result of any physical injuries she suffered in the Rome Airport attack.

In sum, Claimant has failed to carry her burden of proof to show that her displaced pituitary stalk, pituitary tumor, or resulting hyperprolactinemia were caused by any physical injury she sustained in the Rome Airport attack.

Because we conclude that Claimant has failed to establish that a physical injury from the attack was the legal cause of her pituitary problems (or any of the associated symptoms), we need not address the question of whether the severity of those injuries constitutes a special circumstance warranting additional compensation beyond the $3 million she has already been awarded.

Conclusion

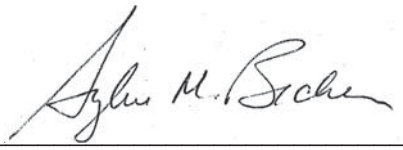
Having considered all the evidence submitted, the Commission concludes that Claimant is not entitled to additional compensation beyond the $3 million the Commission has already awarded her. Claimant's shrapnel injuries are not severe enough to qualify her for additional compensation, and she has failed to carry her burden to prove that it was a physical injury from the Rome Airport attack that caused her displaced pituitary stalk, pituitary tumor, hyperprolactinemia or any of the symptoms or injuries associated with those conditions. 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. Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, May 12, 2015
and entered as the Proposed Decision
of the Commission.

Anuj C. Desai, Commissioner

This decision was entered as the Commission's Final Decision on

October 15, 2015



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery 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 delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2014).