

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

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-008
	}	
	}	Decision No. IRQ-I-015
Against the Republic of Iraq	}	

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

FINAL DECISION

Claimant objects to the Commission’s Proposed Decision denying his claim against the Republic of Iraq (“Iraq”). In that decision, the Commission concluded that Claimant had failed to meet his burden to prove that Iraqi officials had subjected him to an aggravated physical assault. The Commission found that Claimant was thus unable to show that Iraq had knowingly inflicted upon him a “serious personal injury,” as required by the State Department’s referral letter authorizing the Commission to hear claims in this program.¹ On objection, Claimant has submitted additional evidence and argument in support of his claim. After carefully considering this additional evidence and argument, we again conclude that Claimant has failed to meet his burden to prove he

¹ See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”).

suffered an aggravated physical assault. We thus affirm the Proposed Decision's conclusion that this claim be denied.

BACKGROUND

Claimant brought this claim against Iraq based on alleged injuries he suffered while being held hostage in Kuwait and Iraq between August and December 1990. Claimant sought compensation, in addition to the \$800,000 paid to him by the United States Department of State for his experience as a hostage, based primarily on a claim that on two occasions in August 1990, Iraqi soldiers physically assaulted him. As a result of the alleged assaults, Claimant maintained he suffered numerous long-term physical injuries. In a Proposed Decision entered May 8, 2014, the Commission concluded that Claimant had satisfied the requirements for jurisdiction, but denied the claim on the record then before it, finding that Claimant had failed to carry his burden to prove the alleged assaults and injuries and had thus not shown that he was entitled to additional compensation under the terms of the 2012 Referral. *See* Claim No. IRQ-I-008, Decision No. IRQ-I-015 (2014) (Proposed Decision).

On May 23, 2014, Claimant filed a timely notice of objection and requested an oral hearing. On February 25, 2015, Claimant submitted a brief containing further evidence and argument in support of his objection, including two new sworn statements by third parties. The Commission held a hearing on the objection on March 12, 2015. At the hearing, Claimant provided sworn testimony, and his attorney also presented legal argument. Shortly after the hearing, the Commission requested that Claimant provide records from a workers' compensation claim that he testified he had filed with the United States Department of Labor ("Workers' Compensation records"). He mentioned these

records for the first time in his hearing testimony. This request followed several earlier requests by the Commission staff for Claimant to provide all medical records in support of his claim. Claimant provided documents from the Workers' Compensation records on September 4, 2015.

DISCUSSION

To decide this claim, the Commission must determine whether Claimant's evidence, which now includes Claimant's testimony, two new declarations, and the newly submitted medical records, meets his burden to prove that he was subjected to an "aggravated physical assault" and thereby suffered a "serious personal injury" of sufficient severity to constitute a "special circumstance warranting additional compensation," as required under the 2012 Referral. We conclude that, even with this new evidence, Claimant has failed to carry his burden of proving his claim.²

I. Proposed Decision

In its Proposed Decision, the Commission concluded, based on the evidence before it at that time, that Claimant had "failed to meet his burden to substantiate (1) that the alleged assaults occurred; (2) that, if they did occur, the extent of the alleged assaults; and (3) the causal connection between the alleged assaults and any subsequent injuries."³

At the time of the Proposed Decision, Claimant's only evidence about the alleged assaults and injuries consisted of his own two declarations and one from Dr. Lee King.

The Proposed Decision first noted that Claimant's allegations about the specifics of the

² Claimant bears the burden to prove his allegations. *See* 45 C.F.R. § 509.5(b) (2013) ("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."); *see also* Claim No. LIB-II-150, Decision No. LIB-II-115 (2012) (denying claim because claimant failed to establish either the extent of the injury actually suffered as a result of the attack or that the severity of the injury was more than superficial).

³ Proposed Decision at 1.

two attacks were uncorroborated. In his declarations, Claimant described in some detail how the soldiers “beat [him]—striking the back of [his] head, [his] ribs, and [his] knees repeatedly with their rifle butts,” leaving him “bleeding from [his] lip and with bruises and welts all over [his] body. [He] was in agonizing pain—hurting everywhere and limping from the blows to [his] knee and ankle.”⁴ He went on to say that he “was still limping at the time of [his] release some four months later.”⁵ Moreover, he said that, upon his return to the U.S., he sought treatment from his private physicians, Dr. Alvin Stein and Dr. Lee King, “to address the knee and sciatic nerve injuries that [he] had suffered as a result of both the beatings and resulting falls that had occurred during [his] detention.”⁶ In his sworn declarations, Claimant also stated that he had numerous other problems as “a result of those beatings,” from a bulging disc and chronic back pain to knee, foot, and ankle problems.⁷ The Commission determined that despite this detail about the alleged assaults and injuries, Claimant’s uncorroborated declarations, without supporting medical records, did not provide enough evidence to meet Claimant’s burden.

The Commission then turned to the one piece of evidence other than Claimant’s own declarations, Dr. King’s declaration. Dr. King stated that Claimant had visited him “[i]n or around the latter part of December 1990” seeking treatment for “foot and leg injuries,” and that Claimant had told him that the injuries “occurred as a result of [Claimant] having been badly beaten by Iraqi soldiers.”⁸ Dr. King did not, however, directly connect any of Claimant’s injuries to the alleged assaults. While he did state that

⁴ *Id.* at 8 (quoting Claimant’s declaration, with alterations in Proposed Decision).

⁵ *Id.* at 9 (quoting Claimant’s declaration, with alterations in Proposed Decision).

⁶ *Id.* at 10 (quoting Claimant’s declaration, with alterations in Proposed Decision).

⁷ *Id.* at 11-12 (quoting Claimant’s declaration).

⁸ *Id.* at 13 (quoting Dr. King’s declaration, with alterations in Proposed Decision).

the injuries to Claimant’s foot and leg were “clearly the result of external trauma,” he neither explained his conclusions nor stated whether there might be other potential causes of Claimant’s injuries.⁹ Finally, the Proposed Decision noted other evidence that the Commission had independently uncovered—in particular, contemporaneous newspaper articles and a 1996 book—that raised further questions about the alleged assaults and any potential connection with Claimant’s injuries.¹⁰ In sum, the Proposed Decision concluded that Claimant had failed to meet his burden to show that the alleged assaults had occurred and, even if they had occurred, their extent or connection with any of Claimant’s alleged injuries.

II. New Evidence

On objection after the Commission issued its Proposed Decision, Claimant provided live testimony and responded to the Commission’s questions. He also submitted two new declarations—one from Ambassador Joseph C. Wilson, IV, and another from Joseph Hunter Downs, II. After the hearing and several requests, Claimant submitted the Department of Labor documents involving his workers’ compensation claim.

⁹ *Id.* at 13 (quoting Dr. King’s declaration).

¹⁰ *Id.* at 14-15. In particular, we noted that two articles published in the ^{5 U.S.C. §552(b)(6)} the day after Claimant returned to the United States from his captivity, made no mention of the assaults. One of the articles was focused solely on Claimant and was entitled “^{5 U.S.C. §552(b)(6)} Man Treated ‘Decently’ in Captivity.” It reported that “[u]nlike some other hostages, who said they were starved and abused, [Claimant said he] was treated decently by his captors and was never threatened.” ^{5 U.S.C. §552(b)(6)} *Man Treated ‘Decently’ in Captivity*, ^{5 U.S.C. §552(b)(6)} Likewise a second article that same day in the same newspaper quoted the Claimant as stating, “I saw shooting but I didn’t see any violence.” ^{5 U.S.C. §552(b)(6)}

In a book published in 1996 by The Office of History of the Army Corps of Engineers, the author reports on what may have been one of the incidents Claimant described in his Declarations, but does so without any reference to an assault. The book says, “when [Claimant] finally ventured out, Iraqi soldiers stopped him at a checkpoint, commandeered his car, and made him chauffeur them around.” ^{5 U.S.C. §552(b)(6)}

Declarations Submitted on Objection: Claimant submitted a declaration from Ambassador Joseph C. Wilson, IV, who states that during the period of the Iraqi invasion of Kuwait he was the Chargé d’Affaires at the U.S. Embassy in Baghdad. He further states that Claimant arrived at the U.S. Embassy in Iraq on August 24, 1990, as part of a convoy of American officials and their dependents from the U.S. Embassy in Kuwait. Claimant was required to remain in Baghdad for the next three and a half months, and Ambassador Wilson met with him many times during this period. Ambassador Wilson states that he recalls a day in November 1990 when Claimant told him a “story of an incident in which [Claimant had been] beaten by Iraqi soldiers in Kuwait during the early days of the invasion and prior to his having taken refuge at the U.S. Embassy compound.” Ambassador Wilson further states that he remembers that, “during the period [they] were in Baghdad together, [he] noticed on a couple of occasions that [Claimant] was having some problems with his gait and, during [their] discussion, [Claimant] attributed this to the beating he [had] suffered in Kuwait.” In making these statements, however, Ambassador Wilson does qualify them by declaring that he “[could not] recall most of the details” of his conversations with Claimant.

Claimant also provided a declaration from Joseph Hunter Downs, II, who states he was a “political-military officer” for the U.S. Embassy in Kuwait at the time of the Iraqi invasion. He states that he was part of the convoy from the Embassy in Kuwait to the Embassy in Baghdad that left on August 23, 1990, and that he first met Claimant “about a week or so before” then. He further states that, “During that week[,] . . . I recall noticing that [Claimant] had a limp and exhibited a certain discomfort while walking. I

do not recall asking the cause of this discomfort. Nor do I recall [Claimant] providing any explanation.”

Live Testimony: Claimant's testimony at the hearing on March 12, 2015 reiterated the allegations in his written declarations. For example, Claimant testified that in one incident he was hit with a rifle butt in the back, head, and shoulders, and in another incident he was struck in the back of the neck. He further testified that this resulted in cuts to his lip and arm, bruises, and temporary injuries to his knees and back.

Claimant did, however, have trouble on occasion remembering numerous specific facts about the alleged attacks and the time he spent in Kuwait after the Iraqi invasion. Indeed, Claimant himself testified that his “recollection . . . and exactly what happened during which particular attack is kind of fuzzy.” For example, Claimant could not remember the number of different assault incidents, whether two, three or more. He also could not remember the date of the first alleged incident; the date of the second alleged incident; whether, on the one occasion, he was pulled through the window or the door of his car; how many soldiers were involved in the first incident (ten, fifteen or perhaps twenty); how many soldiers got into the car with him in that incident (five or six); how many soldiers were involved in the second incident (six or ten); which of the incidents involved him escaping by getting the soldiers alcohol; and exactly when he got to the U.S. embassy (about six or eight days after “running around”).

Workers' Compensation Records: During the Commission's examination of Claimant at the hearing, Claimant acknowledged that the Department of Labor might have some relevant medical records. Immediately after this testimony, the Commission staff orally requested that Claimant seek those documents and provide them to the

Commission. After several more requests after the hearing, Claimant did so. These records contain over 1,000 pages (although many of the documents appear to be duplicates), and they all relate to a claim for workers' compensation Claimant filed with the Department of Labor's Office of Workers' Compensation Programs. The initial claim was for a traumatic injury Claimant suffered more than six years before his detention in Kuwait and Iraq, on February 10, 1984: he was working at a U.S. Air Force base in Korea, when he slipped and fell through a crevice in the ice. The documents include numerous medical records discussing subsequent injuries and potential connections between those injuries and the initial 1984 accident. They describe Claimant's ankle and knee problems, including limping problems pre-dating Claimant's time in Kuwait and Iraq, as well as numerous other unrelated medical problems. The documents include several medical histories, as well as federal forms that required Claimant to list all of his injuries. The Workers' Compensation records also contain several evaluations by Dr. King, whose declaration Claimant submitted as evidence in this Claim.

Importantly, none of the Workers' Compensation records make any mention of any alleged assault or injuries from Claimant's time in Kuwait or Iraq, despite the fact that some of the documents would be expected to include such references if the alleged assaults in fact occurred. For example, the records include a U.S. Department of Labor Office of Workers' Compensation Program form signed by Claimant, dated June 12, 1991 (about six months after his release from Iraq), and captioned Federal Employee's Notice of Recurrence of Disability and Claim for Continuation Pay/Compensation ("1991 Recurrence Form"). This 1991 Recurrence Form lists the "date of recurrence" of his

initial 1984 injury as October 15, 1990 and notes that Claimant “stopped work” on June 17, 1991. The form requires the submitter to “[d]escribe all injuries and illnesses which you suffered between the date you returned to work following the original injury [here, 1984], and the date of recurrence.” Claimant’s response listed a hospitalization in 1986 for “[probable] cardiac problems, but that diagnosis was later changed to extreme stress”; and he also states that in 1986, 1987, and 1989, he “[l]ost time from work due to lower back [m]uscle [s]pasms and [s]ciatic [n]erve problems due to [a] limp caused by” his original foot injury—that is, the 1984 injury from Korea. Yet, Claimant listed nothing about any alleged assaults or injuries occurring in Kuwait in or around August 1990. He signed the form directly underneath a statement that included the following language: “Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided by the FECA or who knowingly accepts compensation to which that person is not entitled, is subject to felony criminal prosecution and may, under appropriate provisions, be punished by a fine or imprisonment or both. . . . I certify, under penalty of law, that the information provided on this form is true and correct to the best of my knowledge.” Claimant also filled out and signed another copy of this same form on October 3, 2000, for a September 2000 recurrence of the 1984 injury. Where he is again asked to describe all injuries which he has suffered between the original injury (in 1984) and the recurrence (now, in 2000), he again makes no mention of any assault in Kuwait in August 1990, although he does mention a broad array of other injuries and maladies, including an injury from a car accident, colds, flus, infections, and the removal of a polyp from a vocal cord. Claimant also filled out and signed this same form on May 1, 2001, for medical treatment

beginning in April 2001; again, he claims that numerous ongoing problems are related to the 1984 injury, mentions other medical problems and injuries, but still makes no mention of any assault in Kuwait.

There are also a number of medical evaluation letters among the Workers' Compensation records, including at least four, ranging in date from 1996 to 2003, from Dr. H. Lee King, who provided the declaration in this claim discussed in the Proposed Decision¹¹ and who Claimant states treated him when he returned from Iraq. Dr. King's evaluation letters make no mention of any assault or other injury in Kuwait. Instead, to the extent any of them mention a cause of Claimant's ongoing medical problems, they connect those problems to Claimant's 1984 fall in Korea. Moreover, a 1988 transcript from a hearing before the Department of Labor's Office of Workers' Compensation Programs indicates that Claimant testified, under oath, that Dr. King had treated him for the injuries to his back, legs, knees, and ankles as far back as 1984.

Other medical records purporting to include complete medical histories of Claimant also make no mention of any injuries from Kuwait or Iraq. For example, a history and physical examination conducted at Good Samaritan Hospital and Health Center on June 17, 1991 (about ten months after the alleged assaults in Kuwait), recites Claimant's medical history but makes no mention of any assault in Kuwait (even though other problems are discussed, such as a hemorrhoidectomy and a lymph node biopsy). Another example is an eight-page evaluation conducted by an orthopedic surgeon on September 20, 2010 discussing Claimant's medical history at length. This 2010 document mentions Claimant's 1984 injury in Korea and his subsequent ankle, foot, and

¹¹ See *supra* at 4-5.

knee problems, as well as back pain and a limp Claimant developed in Turkey in 1987 and 1988. Yet, this extensive evaluation makes no mention of any assault in Kuwait. Notably, after discussing the 1984 injury, this 2010 medical evaluation states that Claimant “denies any further injuries to either the left ankle, foot, either knee or lower back after the onset of the present symptoms.”

III. Analysis

On objection, Claimant has conceded that “he is unable to carry his burden of proving the connection between his long-term physical injuries and the [alleged] beating he suffered in Kuwait.” However, he states that he has proven that he was assaulted and suffered a serious short-term injury and that he should thus be awarded \$500,000. The essence of Claimant’s argument is that his newly submitted evidence overcomes the earlier evidentiary shortcomings and provides sufficient proof that Iraqi officials subjected him to an “aggravated physical assault.” He claims that his declarations and testimony, combined with the new declarations from Ambassador Wilson and Mr. Downs, meet his burden to prove, at least, that he was brutally attacked. Even if he hasn’t established every minute detail of the incidents, he effectively says, he has at least shown that the attack occurred and that they were sufficiently brutal to constitute “aggravated physical assaults.” In Claimant’s view, the lack of evidence about the connection between the alleged assaults and his long-term injuries is not determinative: “just as the absence of such evidence has not prevented claimants in other cases from establishing that they suffered serious short term injuries as the result of their having been assaulted in other cases under this Program, it does not prevent [Claimant] from carrying his burden here.”

We disagree. We conclude that, even with Claimant's new evidence, he has failed to establish the extent of the alleged assaults and has thus failed to show that any of the alleged assaults was sufficiently brutal to constitute an "aggravated physical assault." The problem with Claimant's evidence is not simply, as he puts it in his brief, "the *absence*" of evidence connecting the alleged assaults with his long-term injuries, but the *presence* of evidence contradicting some of the sworn statements submitted in support of his claim. This undermines the credibility of those statements, thereby in turn undermining the reliability of the rest of Claimant's sworn declarations and testimony.

Claimant points out that we have previously awarded compensation without medical records, in situations where we would not expect that medical records would exist, as long as a claimant's credible oral testimony was consistent with written testimony from a non-interested witness who could attest that the claimant had contemporaneously described the incident to the witness.¹² Claimant therefore contends that, if the Commission were to find his live testimony to be credible, that testimony, combined with the declaration of Ambassador Wilson describing contemporaneous conversations he had with Claimant about the alleged assaults, could suffice to meet Claimant's burden.

Here, however, Claimant's declarations and oral testimony lack reliability and therefore cannot be used as evidence to show the extent of the alleged assaults. Since Claimant's declarations and oral testimony are the only evidence of the details of the alleged assault and we find that evidence unreliable, Claimant has failed to meet his burden to submit sufficient evidence to prove the extent of the attack. Ambassador

¹² See, e.g., Claim No. IRQ-I-010, Decision No. IRQ-I-022 (2015).

Wilson's statement that Claimant told him he had been "beaten by Iraqi soldiers in Kuwait" provides some evidence of an altercation, but none as to whether it rose to the level of an aggravated physical assault. Quite simply, we do not know whether the details of Claimant's description of the alleged assaults is accurate and can thus make no finding as to whether the alleged assaults rise to the level of an aggravated physical assault.¹³

Three important factors about the evidence lead us to the conclusion that the details about the alleged assaults that Claimant described in both his declaration and oral testimony are too unreliable to meet his burden here. First, his two declarations contain specific statements that are not credible in light of the Workers' Compensation records. In his 2010 Declaration, for example, Claimant says, "I also *began working* with my private physicians, Dr. Alvin Stein and Dr. Lee King, in order to address the knee and sciatic nerve problems *that had resulted from* falls and other incidents occurring during my time as a hostage." He then says, "Prior to my captivity, *I had been generally physically healthy, but after my release, I suffered from chronic knee, foot, and ankle problems, which I believe occurred from* physical injuries suffered during my captivity, including physical assaults by Iraqi soldiers." His 2013 Declaration similarly attributes his knee and sciatic nerve injuries to "both the beatings and resulting falls that had occurred during [his] detention." He then goes on to say, "To this day, I continue to suffer from a bulging disc and chronic – and sometimes excruciating – back pain that

¹³ To be compensable under this program, "an aggravated physical assault must be so brutal that it either is intended to or actually does result in death, permanent disfigurement or significant damage to some body part or organ." See Claim No. IRQ-I-012, Decision No. IRQ-I-028, at 8 (2015) (Final Decision). An "aggravated physical assault" must include a brutal physical contact, one that causes physical trauma." *Id.*

shoots down my spine to my leg at the sciatic nerve. I also continue to struggle with knee, foot and ankle problems, *all of which are a result of those beatings.*”

At least two important aspects of these sworn statements are not credible. First, Claimant’s allegation that he was generally free of injuries to his knee, foot, and ankle before the alleged assaults is contradicted by medical records clearly indicating that Claimant had such injuries prior to the assaults. Claimant’s statement in his November 13, 2010 Declaration that “Prior to my captivity, I had been generally physically healthy, but after my release, I suffered from chronic knee, foot[,] and ankle problems” implies that he did not have “knee, foot, and ankle problems” “prior to his captivity.” This is contradicted by, for example, the record of his medical examination on September 20, 2010 connecting numerous leg problems to his 1984 accident in Korea and connecting his low back pain and limp to his time in Turkey in 1987 and 1988.

Second, Claimant’s repeated statements under oath that his knee, foot, ankle, and sciatic nerve injuries *were caused by* the alleged assaults in Kuwait are inconsistent with his numerous statements to the Office of Workers’ Compensation Programs at the Department of Labor that it was his 1984 fall in Korea that caused those injuries. True, his long-term injuries could theoretically be causally connected to both incidents, but his failure *ever* to mention the alleged assaults in Kuwait in *any* of his submissions to the Office of Workers’ Compensation Programs, even when specifically asked to declare “all injuries and illnesses” numerous times, including once in June 1991, a mere six months after his return from Iraq, makes us question his assertion of a causal connection to the alleged assaults. Moreover, we note that the Claimant’s sworn testimony that he “*began working*” with Dr. King in 1990 contradicts his sworn testimony to the Office of

Workers' Compensation Programs in 1988 showing that he had been working with Dr. King for more than six previous years *on these very injuries*. These inconsistencies render Claimant's sworn statements that he believes his long-term injuries to be connected with any alleged assaults in Kuwait not credible.

A second factor militating against treating Claimant's testimony as reliable evidence of the details of the alleged assaults is that his oral testimony was unclear about numerous details. As noted above, he could not remember the number of soldiers involved in the alleged attacks; the dates of the alleged attacks or his arrival at the U.S. embassy; whether he was pulled through a car window or door; and most importantly, even the number of different incidents involving Iraqi soldiers assaulting him. In his own words, his "recollection" was kind of "fuzzy." We understand, of course, that these events are alleged to have happened a quarter-century ago, and by itself, a failure to remember every detail of an event so long in the past would not be dispositive.¹⁴ Still, this further undermines the reliability of Claimant's testimony on the specific question of the extent of the alleged assaults and in particular, whether the assaults rise to the level of an aggravated physical assault.

Finally, the Workers' Compensation records call into question Dr. King's Declaration attesting that he "specifically recall[s] [Claimant] telling [him] that the injuries for which he was seeking treatment occurred as a result of his having been beaten by Iraqi soldiers during the period of his detainment." This statement is at odds with Dr. King's own contemporaneous letters in the Workers' Compensation records explicitly

¹⁴ The Commission recognizes that "[a]llowance must be made for infirmities of memory[.]" Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* 316 (Cambridge University Press 2006) (1953) (quoting *Studer (U.S.) v. Gr. Brit.*, 6 R. Int'l Arb. Awards 149, 152 (Gr. Brit-U.S. Arbitral Trib. 1925)).

stating that Claimant's various injuries were caused by the 1984 fall in Korea and the complete absence of any mention of Iraq or Kuwait in those letters. The letters also undermine the clear implication in Dr. King's Declaration of a causal connection between an alleged assault in Kuwait and Claimant's subsequent injuries—in particular, Dr. King's conclusion in his Declaration that “injuries to [Claimant's] leg and knee . . . were clearly the result of external trauma” and his references to Claimant's leg injuries and “substantial sciatic nerve pain.”

In sum, we find the evidence put forward by Claimant not sufficiently reliable to meet his burden to show that he was subjected to an “aggravated physical assault.” He has therefore failed to show that he suffered a “serious personal injury” warranting additional compensation under the 2012 Referral.

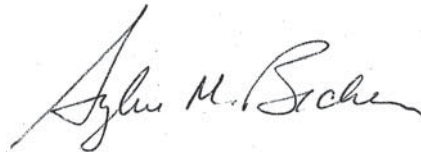
CONCLUSION

For the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the Commission concludes that the Claimant has not met his burden of proving that he has satisfied the requirement in the Referral that he have suffered a “serious personal injury.” 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, November 3, 2015
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

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

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Republic of Iraq

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Claim No. IRQ-I-008

Decision No. IRQ-I-015

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Kuwait and Iraq between August and December 1990. The United States Department of State has already provided him compensation for his experience as a hostage. He now seeks additional compensation based on a claim that on two separate occasions Iraqi officials beat him and that, as a result, he suffered severe physical injuries which persist to this day. The Commission concludes that, on the present record, the Claimant has failed to meet his burden of proof to substantiate (1) that the alleged assaults occurred; (2) that, if they did occur, the extent of the alleged assaults; and (3) the causal connection between the alleged assaults and any subsequent injuries. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that he moved to Kuwait in July 1990 to work on a Kuwaiti Air Force construction project for the U.S. Army Corps of Engineers. He was thereafter trapped in Iraq after Iraq invaded Kuwait on August 2, 1990. After an initial stay in his Kuwait City hotel, the Claimant was confined for about a week in the U.S. Embassy in Kuwait and then for three months in the U.S. marine barracks and other U.S. Embassy buildings in Baghdad. Iraq eventually permitted Claimant to leave the country on December 9, 1990. This claim focuses on two incidents in August 1990 when Iraqi forces allegedly physically assaulted Claimant. Claimant's alleged experiences and injuries are detailed further in the Merits section below.

Claimant was part of a suit initiated against Iraq in federal court in 2001 seeking damages for a variety of injuries. *See* ⁵ U.S.C. §552(b)(6)

. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation

“encompassed physical, mental, and emotional injuries generally associated with” being held hostage or subject to unlawful detention.¹ Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. For Claimant, this was \$800,000 total.

The State Department’s Legal Adviser subsequently requested that the Commission commence a claims program for some of the hostages that it had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who suffered a “serious personal injury,” when that injury was “knowingly inflicted ... by Iraq” and the severity of that injury is a “special circumstance warranting additional compensation.” The State Department made its request in a letter dated November 14, 2012 which the Commission received pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to “receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or 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”). The letter sets forth the category of claims as follows:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq¹ in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking² provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State³ for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, “serious personal injury” may include instances

¹ A group of hostages, not including Claimant, received compensation for economic loss. The hostages that received compensation for economic loss are not before the Commission in this program.

of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

¹ For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

² Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

³ The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”) at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. Commencement of Iraq Claims Adjudication Program, 78 Fed. Reg. 18,365 (Mar. 26, 2013).

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of compensation from the Department of State for his claim of hostage-taking, and his alleged personal injuries.

DISCUSSION

Having reviewed all the documents the Claimant has submitted, we conclude that (1) the Commission has jurisdiction over the claim but (2) the Claimant has failed to

carry his burden of proof with respect to the alleged injuries and thus has not shown that he is entitled to additional compensation under the terms of the 2012 Referral.

Jurisdiction

The 2012 Referral's statement of the category of claims defines the Commission's jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to entertain only claims of individuals who (1) are U.S. nationals and (2) "already received compensation under the Claims Settlement Agreement from the Department of State¹ for [their] claim of hostage-taking," where "such compensation did not include economic loss based on a judgment against Iraq[.]" 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

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 at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 5-6 (2014) (Proposed Decision). Claimant satisfies the nationality requirement. He has provided a copy of two U.S. passports—one from the time of the hostage-taking (valid from May 1990 to May 1995) and his current one (valid from May 2013 to May 2023).

Compensation from the Department of State

The Claimant also satisfies the second jurisdictional requirement. He has submitted a copy of a Release he signed on August 8, 2011, indicating his agreement to accept a given amount from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of

State that he was paid this sum on September 9, 2011. Claimant further stated under oath in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

Merits

The 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of a claim. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 7-8 (2014) (Proposed Decision). First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” In order to satisfy this standard, the injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. *Id.* at 7.

The second requirement is that Iraq must have “knowingly inflicted” the injury. Thus, even where a claimant suffered a serious personal injury that satisfies the other requirements in the 2012 Referral, it must be proven that Iraq knowingly inflicted the injury.²

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” In determining whether the severity of the injury is such a “special circumstance,” the Commission will consider the nature and extent of the injury itself

² “Iraq” is defined in footnote 1 of the Referral.

(including the specific acts committed by Iraq giving rise to such injury), the extent to which the injury substantially limits one or more of the claimant's major life activities (both in the immediate aftermath of the injury and on a long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury. *See id.* at 8.

Here, Claimant's primary allegations of "serious personal injuries" stem from two physical assaults by Iraqi forces. To prove these allegations, the Claimant has submitted three pertinent declarations: his own June 21, 2013 declaration prepared for this proceeding; an earlier November 13, 2010 declaration he submitted in the federal court litigation; and a very short (four-paragraph) November 15, 2013 declaration of Dr. Lee King, who states he is a retired orthopedic surgeon who treated the Claimant in December 1990 and for several years thereafter. These declarations are Claimant's only relevant evidence.³ In particular, Claimant has not submitted any contemporaneous medical records in support of his claim. For the reasons discussed below, the Commission concludes that the Claimant has failed to carry his burden to prove important facts relevant to his allegations, facts that would go to whether he suffered a "serious personal injury" within the meaning of the 2012 Referral.

Alleged Physical Assaults in August 1990. Claimant alleges that in July 1990 he was sent to Kuwait by the Army Corps of Engineers on a temporary assignment to work on a Kuwaiti Air Force construction project. He was initially living in a hotel in Kuwait City, where he remained for the first couple of weeks after Iraq invaded Kuwait in

³ Claimant also submitted three declarations prepared by other hostages in Kuwait and Iraq at the time: a February 11, 2002 declaration of Lt. Col. Thomas G. Funk; a February 12, 2002 declaration of Col. Fred L. Hart, Jr.; and a February 4, 2002 declaration of David C. Forties. These declarations do not even reference Claimant or the alleged physical assaults against him and thus do not provide any support for this claim.

August 1990. He states in his June 21, 2013 declaration that, on or about August 5, 1990, he drove to the U.S. Embassy in Kuwait. When he arrived in the area, he saw that it was encircled by Iraqi forces and turned around to head back to his hotel. At a checkpoint between the Embassy and the hotel, he states, he was stopped by a group of approximately six Iraqi soldiers who instructed him to get out of his car. He rolled down the window and took out his U.S. identification. The Iraqi soldiers then pulled Claimant out of the car through the car window, causing him to fall to the ground. Claimant asserts that he was then assaulted as he attempted to stand up: “One of the soldiers hit me in the back of my head with his rifle butt – slamming my face into the gravel and causing [my] lip to rip open. The soldiers continued to beat me – striking the back of my head, my ribs, and my knees repeatedly with their rifle butts. I crawled up into a ball in a desperate attempt to shield myself, but they just began kicking me with their heavy boots wherever on my body they could manage to land a blow.” According to the Claimant, he escaped in his car after driving his captors around the city in search of food and alcohol.⁴

Claimant states that this attack left him “bleeding from [his] lip and with bruises and welts all over [his] body. [He] was in agonizing pain – hurting everywhere and limping from the blows to my knee and ankle.” He further states that upon returning to his hotel he was cared for by the manager and staff who bandaged up his wounds and provided him with anti-pain medication. He additionally states that he “spent the next couple of days in extreme pain, [his] face swollen and bruised and black and blue marks

⁴ With respect to his escape, Claimant states that, after paying for the food and alcohol, his captors ordered the Claimant to stop the car and they got out. When another group of Iraqi soldiers approached the Claimant’s car, one of the soldiers from the first group shouted for the Claimant to “get out of there right away,” which the Claimant did. The Claimant’s November 13, 2010 declaration in the federal court litigation tells a similar story but describes the events slightly differently. For example, Claimant’s 2010 declaration states that he escaped after he purchased liquor for the Iraqi soldiers “and they got drunk, which caused them [to] be distracted enough to provide me with an opportunity to escape.”

all over [his] body. [He] was unable to walk more than several steps without support and was limping at the time of [his] release some four months later.”

The second assault allegedly occurred approximately five days later, on or about August 10, 1990. Claimant states that he again attempted to go to the U.S. Embassy. He was again stopped at a checkpoint where he was ordered out of his car by Iraqi soldiers. He states that “one of the soldiers struck a vicious blow to [his] head with the butt of [the soldier’s] AK 47 – hitting [Claimant’s] neck and ear and causing [him] to see stars.” He states he was then ordered to turn back and drove to his hotel “with [his] head and ear throbbing in pain from the blow [he] had taken, which continued to cause [him] terrible headaches over the next few weeks.”

The Claimant states that on that same day he was on the roof of his hotel with two colleagues relaying information to the Embassy by walkie-talkie when an Iraqi helicopter approached the hotel. The three men ran into the hotel stairwell just as the helicopter hit the roof with gun and rocket fire.

The Claimant alleges he finally managed to get into the U.S. Embassy in Kuwait in mid-August. He remained there until August 23, 1990 when he left as part of a convoy that went to Baghdad after the Iraqi government promised to issue them exit visas. However, after arriving in Baghdad, the Iraqi authorities ordered the continued detention of all the adult males, and the Claimant was forced to remain in the U.S. Marine barracks and other U.S. Embassy buildings in Baghdad for the next three-and-a-half months until, on December 9, 1990, Iraq finally permitted Claimant to leave the country

Injuries Alleged: As a result of the alleged assaults, Claimant maintains he suffered several physical injuries, both during his detention and after his release.

Claimant states that the first attack left him “bleeding from [his] lip and with bruises and welts all over [his] body” and that he was in “agonizing pain – hurting everywhere and limping from the blows to [his] knee and ankle.” He further states that, upon returning to his hotel, he was cared for by the manager and staff who bandaged up his wounds and provided him with anti-pain medication, and that he “spent the next couple of days in extreme pain, [his] face swollen and bruised and black and blue marks all over [his] body.” The Claimant adds that he was “unable to walk more than several steps without support and was still limping at the time of [his] release some four months later” on December 9, 1990. He further states that, for the remaining time in captivity after he was assaulted, “[He] continued to struggle with the injuries that [he] had sustained from the beatings [he] had taken. [He] struggled with constant – and at times severe – pain to [his] back, knee and ankle. [He] was [still] walking with a limp and, as a result, suffered a number of falls that aggravated [his] injuries, including two in which [he] fell down several steps, once at the U.S. Embassy in Baghdad and another time at the Marine barracks where [he] was quartered.”

The Claimant states that after his release, he sought treatment from his private physicians, Dr. Alvin Stein and Dr. Lee King, “to address the knee and sciatic nerve injuries that [he] had suffered as a result of both the beatings and resulting falls that had occurred during [his] detention.” According to Claimant, “[t]o this day, [he] continue[s] to suffer from a bulging disc and chronic – and sometimes excruciating – back pain that shoots down [his] spine to [his] leg at the sciatic nerve.” He also variously contends that he continues to “struggle with knee, foot and ankle problems, all of which are a result of those beatings”; that he “require[s] injections every six months in order to keep from

having knee replacement surgery”; that his “foot had to be fused” in 2001; that his injuries “have gotten progressively worse”; and that, by 2003, he was “physically unable to continue working and, hence, was forced to take early retirement, causing [him] to lose significant income.” Additionally, in his federal court declaration, the Claimant alleges that he also suffers from lung infestations, an enlarged thyroid gland, and sleep apnea.

Analysis: Claimant bears the burden to prove his allegations. *See* 45 C.F.R. § 509.5(b) (2013) (“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.”); *see also* Claim No. LIB-II-150, Decision No. LIB-II-115 (2012) (denying claim because claimant failed to establish either the extent of the injury actually suffered as a result of the attack or that the severity of the injury was more than superficial). The evidence Claimant submitted—two declarations of his own and one from Dr. King—fails to meet that burden. The declarations Claimant submitted are inconclusive on several important factual questions in this Claim: 1) whether Claimant was actually assaulted in August 1990; 2) if so, the extent of the alleged assaults; and 3) what, if any, injuries can be attributed to the alleged assaults.

First, Claimant’s allegations about the specifics of the two attacks are uncorroborated. While Claimant’s own declarations provide some detail, he has not submitted any declarations from anyone else present in Iraq at the time. The nature of Claimant’s allegations suggests that others would have known about the alleged assault soon thereafter. For example, he says that the hotel manager and staff bandaged his wounds and provided him with analgesics after the first assault. Moreover, soon after the alleged assaults, Claimant spent more than three months trapped in two U.S. embassies

with scores of other hostages. While, in this context, we certainly do not expect evidence from eyewitnesses to the assaults, it seems likely that some non-interested party—whether someone staying at the hotel; a friend or colleague of Claimant in the Army Corps of Engineers; or one of the other hostages with whom Claimant spent more than three months trapped in the two U.S. embassies—should be able to corroborate Claimant’s account, at least with a statement that Claimant was injured or limping or that Claimant told someone about the assaults at the time.

The lack of corroborating testimony about the incident itself is exacerbated by the lack of any medical records. Given Claimant’s allegations about the ongoing nature of his injuries, including a 2001 fusing of his foot, a bulging disc, chronic back pain, knee, foot and ankle problems, and the alleged ongoing treatment requiring injections every six months, the complete absence of medical records is telling. In such circumstances, one could reasonably expect substantial medical records to document these injuries and treatments and at least some medical evidence explicitly connecting them to the alleged assaults. Moreover, the Commission staff specifically requested that Claimant submit such corroborating testimony and medical records.⁵ The lack of such evidence is thus all the more troubling.

⁵ By letter dated September 25, 2013, the Commission staff requested the Claimant to submit any additional evidence that could be provided to corroborate the Claimant’s assertions, as well as evidence concerning the extent to which the severity of his injuries substantially limits one or more of his major life activities, or the extent to which there is permanent scarring or disfigurement that resulted from the serious personal injuries he alleged. The Commission staff noted that such evidence could include, *inter alia*, medical records that specifically discuss the alleged incidents; news reports, personal letters, journal entries, etc., which were created contemporaneously or nearly contemporaneously to the Claimant’s release; and corroborating affidavits, including affidavits by non-interested third parties that attest that the Claimant experienced the events described or that the Claimant told the affiant shortly thereafter that these events occurred. In response, the Claimant stated that he “does not have and is unable to obtain contemporaneous (or nearly contemporaneous) medical records or other documents pertaining to his claim.” The only further meaningful evidence he submitted was the two-page declaration of Dr. King.

The one piece of evidence other than his own declarations that Claimant has submitted—Dr. King’s 2013 Declaration—is insufficient to meet Claimant’s burden of proof. Dr. King does note that 1) the Claimant visited him “[i]n or around the latter part of December 1990” seeking treatment for “foot and leg injuries”; 2) the Claimant told him the injuries “occurred as a result of [Claimant] having been badly beaten by Iraqi soldiers during the period of his detainment”; and 3) Claimant’s sciatic nerve pain “continued to interfere with [his] gait throughout the five to six year period he remained under [Dr. King’s] care.” At best, however, this Declaration provides a modicum of corroborating evidence that Iraqi soldiers beat Claimant and that Claimant *believed* that the beating(s) caused his injuries. Key is that this declaration, based on recollections from 23 years earlier, does not actually connect any of Claimant’s injuries — whether the “foot and leg injuries” or the “sciatic nerve pain” — to the alleged assaults directly. Dr. King does state that his examination revealed “injuries to [Claimant’s] leg and knee” that were “clearly the result of external trauma,” and that “damage” to Claimant’s “pronated foot” was “consistent with his account of blunt force trauma.” But Dr. King provides no explanation for his conclusions, nor does he state whether there are any other potential causes of the conditions allegedly suffered by the Claimant. Moreover, Dr. King makes no statement about the causal connection between any alleged assault and Claimant’s sciatic nerve problems. All he says is that Claimant had the problems for five to six years. By itself, these statements do not suffice, especially given the complete absence of any medical records or other contemporaneous evidence to substantiate treatment for the “five to six year period” he was under Dr. King’s care.⁶ While not dispositive, Claimant

⁶ Moreover, Dr. King’s declaration is not notarized, nor has Claimant provided Dr. King’s *curriculum vitae* or any other professional information about him.

has also not provided any declaration or records of the other doctor he states treated him, Dr. Alvin Stein, or explained why he could not obtain such evidence.

Claimant's lack of medical evidence is of particular importance in this claim given the type of injuries he is attributing to the alleged assaults. His alleged injuries—chronic back pain and knee, foot and ankle problems—are all of the type that could have multiple possible causes, and his claim is that these injuries have persisted for 23 years. To connect such injuries to assaults that took place 23 years ago requires that Claimant prove that causal connection. Here, not only are the two sentences in Dr. King's declaration insufficient, but the record also contains evidence of factors that would, at least as a statistical matter, be correlated to such chronic injuries. Claimant was, at least at one point, very heavy: he says that he weighed 275 pounds before being taken hostage. He is also now in his late 60s. Moreover, Claimant states that he fell down the stairs several times while being held hostage. While we are in no way suggesting that any of these things caused his alleged injuries, they do highlight the thinness of the evidence about the causal connection. In short, because Claimant has not provided any medical records connecting his post-captivity injuries to the alleged assaults, he has not met his burden to show that those injuries are attributable to the alleged assaults.

Finally, the independent evidence we have uncovered raises further questions about the alleged assaults and their potential connection to Claimant's post-captivity injuries. In particular, two articles published in the ⁵ U.S.C. §552(b)(6)

, the day after Claimant returned to the United States from his captivity, make no mention of the assaults and raise, albeit implicitly, some doubt about whether Claimant in fact suffered any assaults and, even if so, how serious they were. One of the articles was

focused solely on Claimant and was entitled “^{5 U.S.C. §552(b)(6)} Man Treated ‘Decently’ in Captivity.” It reported that “[u]nlike some other hostages, who said they were starved and abused, [Claimant said he] was treated decently by his captors and was never threatened.” ^{5 U.S.C. §552(b)(6)} *Man Treated ‘Decently’ in Captivity*, ^{5 U.S.C. §552(b)(6)}

. Likewise a second article that same day in the same newspaper quoted the Claimant as stating, “I saw shooting but I didn’t see any violence.” ^{5 U.S.C. §552(b)(6)}

. In a book published in 1996 by The Office of History of the Army Corps of Engineers, the author reports on what may have been one of the incidents Claimant describes in his Declarations, but does so without any reference to an assault. The book says, “when [Claimant] finally ventured out, Iraqi soldiers stopped him at a checkpoint, commandeered his car, and made him chauffeur them around.” ^{5 U.S.C. §552(b)(6)}

. While these articles and this book do not by themselves conclusively contradict Claimant’s account, they are the only contemporaneous evidence we have, and they do not support his allegations of assault.⁷

In sum, after carefully considering all of Claimant’s evidence, we find that Claimant has not satisfied his burden of proof to substantiate (1) the alleged assaults; (2) the extent of the alleged assaults; and (3) the causal connection between the alleged

⁷ A recent newspaper article appears to reference the same incident, describing a time when Claimant’s “vehicle was commandeered and he was roughed up by [Iraqi] troops” *Algerian Hostage Crisis Brings Back memories of Ali for* ^{5 U.S.C. §552(b)(6)} *Man*, ^{5 U.S.C. §552(b)(6)}. This reference to Claimant having been “roughed up” is more consistent with Claimant’s allegations than the contemporaneous press reports and book. The problem, though, is that this article is 22 years after Claimant’s captivity, and in any event, it does not define “roughed up,” a term that could suggest treatment substantially less harsh than the alleged assaults.

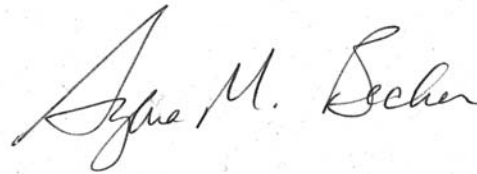
assaults and any injuries he may have suffered. The Claimant has therefore failed to prove that he suffered “serious personal injuries,” as required by the 2012 Referral.

Accordingly, while the Commission sympathizes with the Claimant for the hardship that he undoubtedly endured during his detention in Kuwait and Iraq, in the absence of further evidence substantiating his claim, the claim must be and is hereby denied.

Dated at Washington, DC, May 8, 2014
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner



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) (2013).