

**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-017
	}	
	}	Decision No. LIB-III-024
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant: Joshua M. Ambush, Esq.  
Joshua M. Ambush, LLC

FINAL DECISION

Claimant objects to the Commission's Proposed Decision denying her claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya"). In a previous claims program, the Commission awarded Claimant \$3 million based on physical injuries she suffered during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In this claim, Claimant seeks additional compensation for these same injuries. In the Proposed Decision, the Commission denied the claim because Claimant had not established that the severity of her injuries constituted a "special circumstance" warranting additional compensation, as required by the State Department's referral letter authorizing the Commission to hear claims in this program.<sup>1</sup> On objection, Claimant has submitted additional evidence and argument in support of her claim. In particular, she cites the severe scarring on her left buttock, the permanent nerve damage to her lower

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<sup>1</sup> See 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").

limbs, and the medical procedures she was forced to undergo in the wake of the incident. On this basis, Claimant argues that she is entitled to at least an additional \$2 million in compensation. After carefully considering all of Claimant's arguments and evidence, we again conclude that Claimant has not established that the severity of her injuries constitutes a special circumstance warranting additional compensation within the meaning of the 2013 Referral. We therefore affirm the denial of this claim.

### BACKGROUND

Claimant brought this claim against Libya under Category D of the 2013 Referral, which consists of "claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the [2009 Referral]," provided, that, *inter alia*, "the Commission determines that the severity of the injury is a special circumstance warranting additional compensation . . . ." <sup>2</sup> In support of her claim, Claimant alleged that she had suffered multiple grenade shrapnel wounds to her lower limbs and left buttock which left her with numerous deforming scars on her lower body. She noted that she was hospitalized for two weeks in Israel, and an additional 45 days back home in Puerto Rico, where she underwent several skin grafts and procedures to remove shrapnel. Claimant asserted that, in the years since the attack, she had had "problems standing or walking for long periods" and suffered from "chronic leg nerve pain, leg numbness and weakness." In a Proposed Decision dated July 16, 2015, the Commission denied the claim for additional compensation, finding that the severity of Claimant's physical injuries was not a special circumstance warranting additional compensation. <sup>3</sup>

On August 17, 2015, Claimant filed a notice of objection and requested an oral hearing. On January 28, 2016, she submitted a brief containing further evidence and

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<sup>2</sup> 2013 Referral, *supra* note 1, ¶ 6.

<sup>3</sup> See Claim No. LIB-III-017, Decision No. LIB-III-024 (2015) ("Proposed Decision").

argument in support of her objection. The additional evidence included several recent photographs of Claimant's scarring, along with an affidavit that both authenticated the photographs and further described the injuries that caused the scarring. The Commission held a hearing on the objection on February 11, 2016; Claimant and Mark A. Reischer, M.D., a board-certified physical medicine and rehabilitation specialist, testified at the hearing, and Claimant's counsel argued on Claimant's behalf.

#### DISCUSSION

To prevail in this claim, Claimant has the burden to prove that the severity of her injuries is a "special circumstance" warranting additional compensation beyond the \$3 million already awarded to her.<sup>4</sup> Thus, to decide this claim, the Commission must determine whether Claimant's evidence, which now includes Claimant's testimony, the testimony and written declaration of Dr. Reischer, and the photographs, suffices to meet that burden.

Claimant makes numerous arguments. She asserts that the newly submitted evidence, and particularly the recent photographs, shows that "she has deep, deforming scars on her left buttock, which multiple skin grafts were not able to correct." She also asserts that the wounds to her legs have "result[ed] in permanent numbness, weakness, and pain." As evidence of this, she points to Dr. Reischer's live testimony regarding "permanent nerve damage" in Claimant's legs, which Dr. Reischer opines were caused by her shrapnel injuries. Claimant also cites Dr. Reischer's conclusion that she has a 10% whole person permanent impairment as a result of these injuries. In addition, Claimant points to her own testimony, in which she recalls that her wounds were treated with silver

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<sup>4</sup> 2013 Referral, *supra* note 1, ¶ 6.

oxide and bandaged, and that she had to wear a metal splint. She also restates the assertions in her initial submission, including, *inter alia*, that she was hospitalized for more than 50 days and required 3 months of physiotherapy; that she underwent several attempts at skin graft surgery; and that “[t]he injuries in her legs affect her ability to walk and stand.”

Starting with this evidence, Claimant compares the severity of her injuries to those suffered by other claimants who received awards of additional compensation in these Libyan claims programs. Citing Claim No. LIB-III-018, Decision No. LIB-III-039 (2016) (Proposed Decision) and Claim No. LIB-II-174, Decision No. LIB-II-180 (2013) (Final Decision), Claimant argues that the “disfiguring scars to her gluteal region are the type of ‘substantial and visible scars’ that the Commission has previously found constitute disfigurement under Category D.” Moreover, she maintains that “[f]ifty-nine days of hospitalization far exceeds the amount of hospitalization of . . . many other compensated Category D claimants.” For all these reasons, she requests that the Commission issue an award of at least \$2 million.

After carefully considering Claimant’s evidence and argument in light of the applicable standard in this claim, we again conclude that, even with this new evidence, Claimant has failed to carry her burden of proving her claim.

#### *I. Proposed Decision*

In the Proposed Decision, we denied the claim primarily for three reasons. First, the Commission stated that the evidence was insufficient to show that Claimant’s injuries were among the most severe when compared with all the other claimants who had sought additional compensation in the Libyan claims programs. The Commission explained that the severity of the injuries was unclear from the record at that time, and

what evidence there was appeared to suggest that Claimant's injuries were not severe enough to warrant compensation beyond the \$3 million previously awarded.

Second, the Proposed Decision also cited the lack of clarity about how much Claimant's injuries had impaired her major life functions and activities. Although the medical evidence from the 1970s did indicate the presence of small shrapnel fragments in Claimant's lower body, the records also indicated that Claimant had no limitation of movement and walked normally. Thus, it appeared that her injuries had not limited her mobility in any significant way. Although Claimant had received two disability determinations in the 1970s, the Commission did not find these ratings to be compelling evidence of lifelong disability, and in any event, the associated condition in one of these—"weakness and numbness" in one leg—did not rise to the level of a condition warranting additional compensation. In addition, the Commission noted that Claimant had worked for 30 years after the incident, and had not submitted any medical records whatsoever from between 1977 and 2003.

Finally, the Commission noted that, although Claimant "had large visible scars on her left buttock and still may have some scars there and on her left calf, there [was] no indication that these scars [were] disfiguring to the extent observed in claims where the Commission has awarded additional compensation on the basis of disfigurement."<sup>5</sup>

## *II. Claimant's New Evidence*

On objection, Claimant testified about her experience during the Lod Airport attack, her medical treatment, and the permanent physical impairments that her injuries allegedly caused. She has also provided the testimony and declaration of Dr. Reischer, who discussed in considerable detail his opinion about Claimant's injuries and

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<sup>5</sup> Proposed Decision, *supra* note 3, at 19.

impairments based on the medical records submitted with this claim. Finally, Claimant submitted several recent photographs of the scarring on her lower body said to be the result of her shrapnel injuries and related medical treatment.

*Claimant's Live Testimony:* In her testimony, Claimant, who was 15 years old at the time of the incident, stated that she was with her aunt in the baggage claim area when the attack began, at which point her aunt threw her to the floor. She recalled seeing blood all over the floor, and at some point she “felt a pinch on [her] left buttock and when [she] touched it . . . [she] had skin and blood in [her] hands.” Emergency personnel arrived and took away her aunt, who had also been injured, and when Claimant tried to follow them, she slid on the floor due to all the blood. Claimant testified that she was surrounded by dead bodies and that she remained among them for four to five minutes before a “civilian couple” grabbed her and took her to the hospital. She stated that she does not remember anything after that.

Claimant testified that she “woke up in an operating room” and was told she was at the Assaf Harofeh Medical Center. She recalled that she “saw bandages on [her] right leg and [she] had . . . a metal splint on [her] left leg.” She also testified that she was “laying on [her] side . . . because [she] had a wound on [her] left buttock.” She also claimed that she had a fracture in her left ankle. Claimant stated that, during her stay at the hospital, she underwent various procedures to remove shrapnel from her wounds, but that she “was completely sedated[.]” and “[doesn't] remember anything.” She recalled that she underwent daily wound cleaning on her buttocks, right leg, and ankle, in which the wounds were cleaned, medication was applied, and the gauze bandaging was replaced. Claimant testified that the cleaning process, which lasted about a half hour each day, created a “burning pain[.]” and that silver oxide was used to clean the wound

on her buttocks. She also stated that her leg was in an L-shaped metal splint, and that she had to lay on her right side due to the pain on her left buttock. She claimed that, during her two-week hospital stay in Israel, she needed assistance using the restroom and had to use crutches.

In her testimony, Claimant also addressed a letter which she wrote to her parents while hospitalized in Israel and which the Commission cited in its Proposed Decision. Claimant had written that her “state of health” was “normal” and that she only had “some wounds on my legs and one on my left glute.” She testified that she knew her family would be upset about the death of her aunt, so she “tried to reassure them that [she] was OK.” In reality, she claimed, she “was in a lot of pain.”

Claimant testified that, following her discharge from the Assaf Harofeh Medical Center, she was driven by ambulance to the airport, and flew home using three seats so she could lie down. Once in Puerto Rico, an ambulance met her at the airport and took her directly to Hospital Damas.

Claimant testified that she remained hospitalized at Hospital Damas for 45 days. She stated that, around the second day, she underwent a skin graft; however, that skin graft failed, so she had to undergo a second one, requiring the removal of a quarter-sized piece of skin. To avoid the skin graft failing, Claimant had to lie on her stomach the entire time she was in the hospital. During her stay, she required crutches to use the bathroom. To treat her wounds, according to Claimant, doctors applied silver oxide to her gluteus, causing her pain and burning. Claimant testified that a doctor told her that he had tried to extract some shrapnel remaining in her body, but that he ultimately decided to leave it in to avoid causing more nerve damage.

Claimant further testified that she received daily physical therapy for her legs in her last two weeks in the hospital. For each session, she was placed in a whirlpool for 30 minutes, and lay down on a flat surface to do exercises with a therapist for 30 minutes; in addition, she would use a machine where she would lift weight with her legs. Claimant indicated that her treatment consisted of three sessions daily for a total of 90 minutes of therapy. Although she said it was painful, she recalls the therapist “being happy with [her] progress.” Claimant stated that she used crutches for the last two weeks of her therapy. She further noted that she had worn a splint on her leg while she was hospitalized, but it was removed when she was discharged. After that, she was still on crutches—for about three weeks in August—and even after that her legs remained weak and she moved slowly. Claimant indicated that she could not stand or walk for longer than about ten minutes, a problem that she stated continues today and, while in high school and college, caused her to have to get an exemption for gym class.

Claimant testified that, at present, she has hypersensitivity in her right leg, and that when she touches it, it feels “like needles and pins going in your skin.” She testified that she avoids shaving her legs because it is “very painful.” In addition, she testified that she has scars on her legs, which prevent her from wearing bathing suits or gym clothes. She added that she “avoid[s] sitting on hard surfaces because it bothers [her].” Further, she tends to favor the right side of her body.

Asked during the hearing whether she ever sought further treatment for a particular raised welt on her buttocks that she claimed had gotten infected, Claimant replied that she had not, and simply uses a topical antibiotic, because of embarrassment with the injury. She was also asked whether she had sought any further medical treatment at all between 1977 and 2003 (no medical records had been submitted from



between those dates); Claimant responded only that until the late 1970s or early 1980s she had seen an orthopedic doctor every six months to monitor the shrapnel in her body. According to Claimant, the shrapnel remained inside her, was never removed, and never came out on its own.

*Expert Testimony:* Dr. Reischer testified that he examined Claimant about a month prior to the hearing. His testimony focused primarily on Claimant's medical records.<sup>6</sup> First, Dr. Reischer said Claimant had a "deep wound" on her buttock; "the subcutaneous tissue was gone." Asked why there were so many surgeries required, he said that this was a "big, deep wound" and that Claimant had difficulty maintaining the position necessary to maintain the graft; moreover, he acknowledged that these were complicated procedures. Dr. Reischer was also asked about certain terms used in the discharge summary from 1972; he testified that these terms appeared to evidence a "conservative" (i.e., "non-operative") treatment. He opined, based on the dressing treatment described in the discharge summary, that the doctors were "probably trying to prepare the site to be able to accept the skin graft," although no skin graft was actually performed in Israel.

Dr. Reischer also commented on Claimant's scarring described in Dr. Jorge Bonilla Colon's 1973 medical report, which refers to "hypertrophic scars" on the left gluteal region. He testified that this term refers to large, unsightly scars, versus "atrophic scars," which he characterized as "very thin-skinned scars." When asked, Dr. Reischer confirmed that "irregular" scars (the characterization in Dr. Colon's report) are consistent with shrapnel wounds.

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<sup>6</sup> The medical records are described in detail in the Commission's Proposed Decision. See Proposed Decision, *supra* note 3, at 10-13.

Much of Dr. Reischer's testimony focused on the results of a nerve conduction study contained in the 2004 report of Fernando Norona, M.D. In particular, Dr. Reischer focused on Dr. Norona's conclusion that Claimant suffered from "[d]istal polyneuropathy affecting the lower extremities." As background, Dr. Reischer explained that in such a study, the examiner stimulates a nerve to see how long the electrical signal takes to travel to another part of the body. Occasionally, this measurement is abnormal. According to Dr. Reischer, when such abnormality is observed in all the nerves of a given area, it is referred to as "generalized peripheral neuropathy." Based on the results of the study in Dr. Norona's report, Dr. Reischer said that he "take[s] issue with" Dr. Norona's conclusion that Claimant suffered from polyneuropathy. Dr. Reischer stated that with a general neuropathy (which he appeared to equate with polyneuropathy), all of a set of given nerves are involved; however, according to Dr. Norona's report, the left tibial nerve<sup>7</sup> was slowed from the ankle to the foot, but the right nerve was normal. According to Dr. Reischer, this shows a "focal nerve injury," which he opined is "almost certainly the area where [Claimant] had the shrapnel wound, the fracture, and the new bone that's formed in that area because that's right where that nerve runs."

Dr. Reischer also noted that the report shows that a different nerve, the peroneal nerve,<sup>8</sup> is slowed in the right foot, which he said correlates to an area where Claimant suffered shrapnel wounds. The left peroneal nerve, however, appeared normal. Dr.

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<sup>7</sup> The tibial nerve is

one of the two major divisions of the sciatic [nerve] . . . and courses down the back of the leg to terminate as the medial and lateral plantar [nerves] in the foot; it supplies the hamstring muscles, the muscles of the back of the leg . . . and the plantar aspect of the foot, as well as the skin on the back of the leg and sole of the foot."

*Stedman's Medical Dictionary* 1302 (28th ed. 2006).

<sup>8</sup> The peroneal nerve is "a branch of the sciatic nerve, which supplies movement and sensation to the lower leg, foot and toes." U.S. Nat'l Library of Med., Nat'l Insts. of Health, *Common Peroneal Nerve Dysfunction*, <https://perma.cc/5GGM-GLKM> (last updated August 13, 2015).

Reischer explained that if this were a general neuropathy, those nerves “should both be abnormal.” Dr. Reischer also noted that Claimant’s right sural sensory nerve<sup>9</sup> was abnormal, again, according to Dr. Reischer, right where Claimant had retained shrapnel. The left sural nerve, on the other hand, was perfectly normal. Dr. Reischer opined that perhaps the impairments to these multiple nerves explains why Dr. Norona referred to a general neuropathy, a characterization which Dr. Reischer disputed for the reasons discussed above. He stated that there are “two distal nerves that are neuropathic, but it’s not a generalized neuropathy . . . .” Dr. Reischer opined that in any event the apparent nerve damage was the “result of these injuries and . . . these are the nerves that correspond to where she has some of the leg scars.”<sup>10</sup> Asked whether he believed this nerve damage was permanent, Dr. Reischer said that he did.

Dr. Reischer also testified about Claimant’s degree of impairment. Citing the American Medical Association Guides to the Evaluation of Permanent Impairment, Fourth Edition (“AMA Guide”), Dr. Reischer concluded that Claimant had a 5% whole body impairment to her common peroneal nerve, a 3% whole body impairment to the tibial nerve, and a 5% whole body impairment due to the skin loss on her buttocks. Thus, Dr. Reischer concluded, based on the combined values chart in the AMA Guide, that Claimant had a 10% whole body impairment due to the nerve injuries and skin loss caused by her physical injuries.

The Commission asked Dr. Reischer how this degree of impairment translates into Claimant’s actual experience; he replied that Claimant would suffer from pain,

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<sup>9</sup> The sural nerve is defined as “any of several nerves in the region of the calf of the leg . . . .” U.S. Nat’l Library of Med., Nat’l Insts. of Health, *Medical Dictionary: Sural Nerve*, <https://perma.cc/7DXZ-8TGJ>.

<sup>10</sup> Dr. Reischer briefly mentioned an apparent finding of carpal tunnel syndrome in Dr. Norona’s report, but he concluded that this was not caused by Claimant’s physical injuries from Lod Airport. He drew the same conclusion regarding Dr. Norona’s finding that Claimant suffered from fibromyalgia.

weakness, clumsiness, and numbness. He confirmed that Claimant's testimony was consistent with his findings. However, he acknowledged that Claimant had been on medication for several years that can help alleviate neuropathic pain, so this may have alleviated some of the symptoms. He did not know whether Claimant had been on this medication continuously, however, since it was only reflected in the records from 2003 and 2004. Dr. Reischer was also asked about a notation in Dr. Norona's report that Claimant had been involved in a motor vehicle accident in 2003, and whether he had discussed this incident with Claimant during her visit with him. He replied, "I don't recall."

*Photographs of Scars:* Claimant also submitted several photographs of the scarring on her lower body, said to have been taken in January 2016, along with an authenticating affidavit dated January 21, 2016. The photographs appear to show deep, irregular scarring on her left buttock, as well as a separate circular scar in the upper left portion of her left buttock approximately one inch in diameter, which is, according to Claimant, the site of an attempted skin graft. A small red welt within that scar is, according to Claimant, the site of a recurrent infection, which she "treat[s] with a topical antibiotic at home because [she is] too embarrassed to have a doctor examine the area." She adds that the infection "causes irritation (itching) and pain to the area." Claimant also points out numerous white, circular scars on the left buttock, which she claims indicate where surgeons attempted to remove tissue for skin grafts. These scars, however, are far more faint and do not appear to reveal any significant tissue damage.

### *III. Analysis*

The Commission considers three factors 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: “(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.”<sup>11</sup>

After carefully considering all of Claimant’s evidence and arguments in light of the applicable standard, we again conclude that Claimant has failed to carry her burden of proving her claim. In particular, based on the evidence before us, Claimant has not shown that the overall severity of her injuries is comparable to that of those claimants whose injuries we have previously deemed sufficiently severe to warrant more than \$3 million in compensation.

Nature and Extent of Injury: Claimant’s argument about the nature and extent of her injuries is based on equivocal evidence that falls short of satisfying the Commission’s standard for Category D. While the degree of scarring seen in the recent photographs clarifies the severity of the initial shrapnel injury to Claimant’s left buttock, the other injuries are either not mentioned in the initial medical records at all, or, when they are, do not appear from the evidence to have been particularly severe, at least when compared with claimants for whom this factor was important. While there is no doubt that Claimant suffered a severe shrapnel wound to her left buttock—as the recent photographs make clear—the wound apparently did not require major surgery at the time, and doctors simply dressed and cleaned the wound in preparation for an eventual skin graft upon Claimant’s return to Puerto Rico.

Although the medical records indicate that Claimant underwent various surgeries in Puerto Rico, including skin grafts and shrapnel removal procedures, they do not

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<sup>11</sup> Proposed Decision, *supra* note 3, at 6 (*quoting* Claim No. LIB-III-021, Decision No. LIB-III-016, at 7 (Proposed Decision)) (brackets omitted).

suggest injuries that would satisfy the Commission's standard for additional compensation. Apart from the skin graft on the left gluteus, the medical records indicate simply that Claimant underwent procedures to remove shrapnel from her legs and left foot. They do not indicate how severe those other shrapnel injuries were (e.g., how deep they were, whether they did any significant damage to the leg, whether they became infected, etc.) or whether the fragments could be removed in a fairly quick, outpatient procedure (recognizing, of course, that Claimant was already hospitalized). During visits to her doctors in 1973 and 1977, Claimant reported having suffered a fracture in her left foot from shrapnel fragments; however, none of the medical records, including x-rays of the left foot taken in 1973 and in 2009 mention a left-foot fracture. And while the medical records are clear that a number of metallic fragments were scattered throughout Claimant's right leg and left foot, these fragments appeared to be relatively small and minor enough to have been left in Claimant's body in the decades since the injury.

The medical records do report that Claimant had to wear a splint on her left foot during her stay at Damas Hospital and had to use crutches for two months; however, this by itself does not suggest an initial physical injury severe enough to warrant additional compensation. Indeed, as early as August 1973, the year after the terrorist attack, Dr. Colon stated that Claimant had "no abnormalities in gait or posture[]"; however severe Claimant's initial injuries might have been, they apparently did not prevent Claimant from walking normally 15 months after the attack.

The numerous scars mentioned in the medical records do provide some evidence of the nature of Claimant's initial injuries, but they do not suggest a degree of severity that warrants additional compensation. The scars on Claimant's right leg and left foot and ankle are referenced in medical records from 1973 and 1977; nearly all of them were

estimated to be 1 inch or less, and none, unlike the one on Claimant's left gluteus, was described as "hypertrophic" or "atrophic."<sup>12</sup> In addition, no mention of them is made in the recent medical records and the only photographic evidence of these scars provided by Claimant consists of two photographs showing two small indentations in Claimant's right leg. The scars on her right leg and left foot thus do not evidence a physical injury sufficiently severe to warrant compensation beyond the \$3 million already awarded.

In its Proposed Decision, the Commission made reference to a letter that Claimant wrote to her parents while she was hospitalized in Israel, in which she described her health as "normal" and seemed to downplay her physical injuries.<sup>13</sup> However, Claimant's explanation in her live testimony—that she did this so as not worry her parents more, particularly after the death of her aunt, and that in reality she "was in a lot of pain"—was credible and sincere. Nevertheless, even putting the letter aside, Claimant's injuries are no more severe (and, in some cases, less severe) than numerous other claimants whose claims for additional compensation the Commission has denied.<sup>14</sup>

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<sup>12</sup> Although Dr. Reischer described "atrophic" as referring to "very thin-skinned scars," a more precise definition from the *Attorneys' Textbook of Medicine* characterizes them as scars that, although "limited to the area of tissue loss . . . that area is greater in these scars, and the scar is depressed below the level of the surrounding skin." 9 *Attorneys' Textbook Med. (MB)* ¶ 65D.11(2) (2006).

<sup>13</sup> See Proposed Decision, *supra* note 3, at 15.

<sup>14</sup> See, e.g., Claim No. LIB-II-116, Decision No. LIB-II-166 (2012) (denying claim for additional compensation where claimant suffered multiple shrapnel wounds to his legs, suffered nerve damage (which caused "foot drop") and recurring blood infections, had surgery to remove shrapnel fragments, and wore a foot brace for 18 months); Claim No. LIB-II-175, Decision No. LIB-II-139 (2012) (denying claim for additional compensation where claimant suffered shrapnel wounds to her right foot, requiring shrapnel removal procedures, and has suffered some degree of pain and mobility problems since the incident); Claim No. LIB-II-148, Decision No. LIB-II-185 (2012) (denying claim for additional compensation where claimant had bullet wounds to his chest, buttocks and leg; spent eight days in the hospital after the terrorist attack; had to fly back home while lying on his abdomen and then spent another four weeks in a hospital near his home; and had medical records showing continued pain in his lower leg, thigh and back for the first few years after the attack); 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, Decision No. LIB-II-111 (2011) (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).

In sum, the nature and extent of Claimant's initial injuries are not, by themselves, among the most severe when compared with all the other claimants who have sought additional compensation in these Libyan claims programs. This factor, therefore, does not support an award of additional compensation beyond the \$3 million already awarded to Claimant under the Second Referral.

Impact on Claimant's Major Life Functions and Activities: Claimant has also not shown that the impact on her ability to perform major life functions and activities was significant enough to warrant additional compensation beyond the \$3 million the Commission has already awarded her: The available evidence suggests that Claimant had largely recovered from her injuries within a few years of the terrorist attack. While Claimant was hospitalized in Israel and Puerto Rico for approximately 55 days and was certainly limited in many of her life functions and activities during that time, the evidence suggests that she suffered minimal disruption to her major life activities and functions after her discharge from Hospital Damas in July 1972.

Importantly, despite Claimant's argument to the contrary, the medical evidence before us suggests that Claimant did not have long-term impairment to her mobility severe enough to warrant additional compensation. The evidence does indicate that Claimant complained of pain and weakness in her legs in the first few years after the terrorist attack—in particular, in Dr. Colon's 1973 report and the 1977 report of Juan Llompart, M.D. However, both reports suggest that Claimant's mobility was unaffected, despite the fact that x-rays showed (as they did again in 2009) that Claimant still had some shrapnel fragments in her body. Dr. Colon noted that Claimant had “no abnormalities in gait or posture[]” when he examined her in August 1973. And Dr. Llompart indicated that Claimant “walk[ed] without a limp[]” during his examination in



September 1977. Claimant herself acknowledged in her testimony that her physical therapist at Hospital Damas was “happy with [her] progress.” Thus, despite the fact that Claimant had suffered significant shrapnel injuries and experienced some degree of pain and weakness in her legs that she testified never went away, the evidence suggests that she was able to carry on with her daily activities within a year of her discharge from Hospital Damas.

Moreover, the fact that Claimant has submitted no medical records from between 1977 and 2003 makes it difficult to determine the impact of Claimant’s injuries on her major life functions and activities.<sup>15</sup> Although Claimant did testify that for several years she visited an orthopedic surgeon every six months to monitor the shrapnel remaining in her body, she has not submitted any additional medical evidence from this 26-year period. Even as to the welt on her left buttock, which Claimant testified became infected during her treatment in Israel, Claimant acknowledged that she never sought medical treatment for this condition, treating it at home with only a topical antibiotic. And, while we credit her testimony that she required an exemption for gym class in high school and college during the mid-1970s, we do not view this as an impact on a “major life function or activity” warranting compensation greater than the \$3 million already awarded.

Dr. Reischer’s expert testimony regarding nerve damage suffered by Claimant does fill some of the evidentiary gaps identified in the Proposed Decision. His conclusions do not, however, provide compelling evidence of injuries that would be compensable under Category D. During his testimony, he walked the Commission through the results of Dr. Norona’s nerve conduction study and pointed out that the locations of the slower nerves in Claimant’s left foot and right leg were approximately

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<sup>15</sup> See Proposed Decision, *supra* note 3, at 18.

where she had suffered shrapnel wounds.<sup>16</sup> Dr. Reischer emphasized that this condition was not present in both legs generally. Thus, because the nerve abnormalities corresponded with the locations of Claimant's shrapnel wounds, he opined that they were caused by the physical injuries she sustained in Lod Airport.

Although Claimant appears to have suffered some degree of nerve damage from the shrapnel injuries in her left leg and foot, the evidence suggests that any nerve damage she suffered had at most a minor impact on her major life functions and activities. As indicated above, Claimant has not submitted any medical records from between 1977 and 2003, suggesting the severity of the injuries was not enough to warrant medical intervention. Although the more recent records do indicate that Claimant complained of pain and numbness in her left leg and foot as recently as 2004, the evidence does not establish that Claimant received or required any significant treatment for this condition. The only treatment mentioned in the medical records was a prescription for Neurontin,<sup>17</sup> and even that appears to have been discontinued later that year. Moreover, Claimant worked professionally for over 30 years after the incident, and, in her 2010 affidavit, she attributed difficulty she had working to post-traumatic stress disorder, which is not compensable in this program.<sup>18</sup>

Dr. Reischer's finding of a permanent disability of 10% to the whole person as the result of nerve damage and skin loss (roughly consistent with a similar finding by the

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<sup>16</sup> Dr. Reischer also noted that Claimant's peroneal nerve was slowed in the right foot, which he said correlates to an area that Claimant had suffered shrapnel wounds. According to the available medical records, Claimant suffered shrapnel wounds in her right calf, but there is no mention of any such injuries in her right foot. Because the nerve condition in the right foot does not correspond with an injury documented in the medical records, the Commission does not find a causal nexus established between that nerve condition and any injury Claimant suffered in the Lod Airport attack.

<sup>17</sup> Neurontin (generic name gabapentin) is used to treat seizures and nerve pain resulting from shingles, but may also be used to treat other types of nerve pain, including peripheral neuropathy. *Neurontin*, WebMD, <https://perma.cc/A85Q-MVZM>.

<sup>18</sup> See Proposed Decision, *supra* note 3, at 18.

Israeli National Insurance Institute, discussed in the Proposed Decision<sup>19</sup>), while relevant to the Commission's inquiry, is not sufficient to support an award of additional compensation. Rather, the fundamental issue is the degree to which this disability has prevented Claimant from engaging in major life functions and activities. Dr. Reischer testified that such a disability would normally translate into pain and weakness, which is consistent with Claimant's testimony about her condition. The medical evidence, however, does not show any resulting serious impairment to any major life function or activity, such as Claimant's mobility or ability to work normally.

Other evidence in the record raises questions about the cause of Claimant's alleged impairment. Although Claimant does indicate in her 2014 affidavit that she was unable to work after 36 years in her profession, she appears to attribute this in large part to stress and emotional considerations that caused fibromyalgia. Since Dr. Reischer opined in his testimony that Claimant's fibromyalgia was not related to Claimant's shrapnel injuries and since non-physical injuries such as stress and emotional difficulties are not compensable in these Libyan claims programs, Claimant's inability to work after 36 years cannot support an award.

In addition, it is possible that Claimant's 2003 car accident may be the cause of at least some of the leg pain and numbness Claimant attributes to the shrapnel. After the 26-year gap in medical records (1977-2003), the first medical records Claimant has submitted come from after that accident.<sup>20</sup> According to Dr. Norona's records, this accident roughly coincides with Claimant suffering an assortment of back issues, heightened stress, migraine headaches, and neck pain. Dr. Reischer admitted that he did not discuss the car accident with Claimant and thus did not consider the possibility that it

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<sup>19</sup> See *id.* at 13.

<sup>20</sup> See *id.* at 12-13.

might have contributed to Claimant's leg pain and numbness. While we have no evidence directly connecting the car accident and Claimant's leg pain and numbness, the 23-year gap in medical records combined with the fact that numerous other medical ailments appear to have coincided with the car accident raise further unanswered questions about the causal connection between the shrapnel in Claimant's leg and her reported leg pain and numbness.

That being said, even if all of Claimant's leg pain, weakness, and numbness were attributable to the Lod Airport attack, those ailments are not sufficiently severe to warrant compensation in addition to the \$3 million the Commission has already awarded Claimant. The Commission has denied other claims for additional compensation where the claimant suffered similar pain and weakness in his or her legs.<sup>21</sup> As with those claims, Claimant here has not demonstrated that the leg injuries had a life-changing impact on her personal or professional life sufficient to warrant additional compensation under Category D.

Disfigurement: Finally, for largely the same reasons discussed in the Proposed Decision, we also reject Claimant's argument that the third factor—disfigurement—supports an award.<sup>22</sup> Claimant certainly does have a deep, disfiguring scar on her left buttock and at least two small indentations on her right leg, as Claimant's recent photographs show.<sup>23</sup> However, this scarring is insufficient to warrant additional

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<sup>21</sup> See, e.g., Claim No. LIB-III-012, Decision No. LIB-III-022 (2016) (denying claim despite finding that Claimant continued to suffer right leg and knee pain from shrapnel injuries and suffered related mobility difficulties); Claim No. LIB-II-116, *supra* (denying claim where Claimant had some residual nerve damage to his leg from shrapnel resulting in observable "foot drop" that has resulted in some weakness); Claim No. LIB-II-175, *supra* (denying claim where, *inter alia*, Claimant continued to suffer pain in her hips and knees and was unable to run for long periods).

<sup>22</sup> See Proposed Decision, *supra* note 3, at 19.

<sup>23</sup> Doctors as late as 1977 also noted other scars—most one inch or smaller—on Claimant's left foot and ankle as well as scars on Claimant's right leg, which Dr. Llompert said "constitute a moderate degree of permanent cosmetic defect . . . ." Claimant has not, however, submitted evidence about any current

compensation in this claim: “the disfigurement [is] not ‘a prominent feature of [C]laimant’s overall outward appearance due to the nature and location of the scars.’”<sup>24</sup> As the Commission has previously held, “[t]his factor has been important to the outcome of the Commission’s decision to award additional compensation only when the disfigurement has been significant.”<sup>25</sup> The degree of scarring seen here does not rise to the level meriting compensation beyond that already awarded.

Claimant cites two other Category D decisions in support of her claim that her scarring has “disfigured . . . her outward appearance[]” to a degree that warrants additional compensation under Category D.<sup>26</sup> However, the scarring and disfigurement in both those cases was substantially more severe than what Claimant has proven here. In Claim No. LIB-III-018, *supra*, the Commission awarded additional compensation in part due to numerous “substantial and visible scars[,]” including “a red gash in place of [that claimant’s] right eye,” which had been lost, “as well as scars to his face, right shoulder, back, left side of his chest, right side of his chest, abdomen, and left leg.”<sup>27</sup> And in Claim No. LIB-II-174, *supra*, the Claimant suffered “severe scarring on her left leg, and a deformity and lack of mobility of her left foot that manifested itself as both a dropped left foot and clawing of the toes on her left foot.”<sup>28</sup> The Commission noted that some of these “multiple, deep scars . . . cover[ed] the length of her legs[]” and that she had “visible deformities on her left foot and toes due to both her initial injuries and the

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disfigurement of these other areas of her body, and the more recent medical records contain no mention of those scars. We thus have no evidence that they remain significant.

<sup>24</sup> Claim No. LIB-II-116, Decision No. LIB-II-166 (Final Decision) (2012) (citing Proposed Decision).

<sup>25</sup> Claim No. LIB-III-012, Decision No. LIB-III-022 (2016) (Proposed Decision) (citing, *inter alia*, Claim No. LIB-III-021, Decision No. LIB-III-016 (2016) (finding severe disfigurement to claimant who lost both of her legs and has to wear prostheses).

<sup>26</sup> See Proposed Decision, *supra* note 3, at 6.

<sup>27</sup> Claim No. LIB-III-018, Decision No. LIB-III-039, at 16 (2016) (Proposed Decision).

<sup>28</sup> Claim No. LIB-II-174, Decision No. LIB-II-180, at 4 (2013) (Final Decision).

subsequent surgeries.”<sup>29</sup> While we recognize that Claimant’s scars may have prevented her from wearing bathing suits or gym clothes or going to the beach, we do not believe they warrant an award of compensation beyond the \$3 million the Commission has already awarded Claimant.<sup>30</sup>

### CONCLUSION

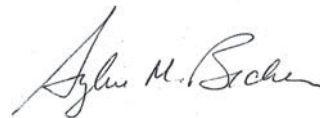
While the record, including Claimant’s compelling live testimony, makes clear that Claimant endured great suffering during the Lod Airport attack, based on the totality of the evidence submitted in light of the severity of the injuries suffered by all the claimants who have sought additional compensation in these Libyan claims programs, we again conclude that Claimant has failed to meet her burden to show that the severity of the physical injuries she suffered at Lod Airport in May 1972 is a special circumstance warranting compensation in addition to the \$3 million she has already received for her injuries. Accordingly, the denial of this claim set forth in the Proposed Decision must be and is hereby affirmed. This constitutes the Commission’s final determination in this claim.

Dated at Washington, DC, January 3, 2017  
and entered as the Final Decision  
of the Commission.



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

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<sup>29</sup> *Id.* at 6.

<sup>30</sup> See LIB-II-116, *supra* note 21, at 5 (denying claim for additional compensation where Claimant testified that “he wears long pants everyday because of the scarring on his legs.”).

**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. LIB-III-017
	}	
	}	Decision No. LIB-III-024
	}	
Against the Great Socialist People’s Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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**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 Lod Airport in Tel Aviv, Israel, on May 30, 1972. In that attack, Claimant suffered grenade shrapnel wounds to both of her legs, her left foot, and left gluteus. Claimant states that these wounds have left her severely disfigured and have resulted in chronic pain and limited mobility. Under a previous program, the Commission awarded Claimant \$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 injuries are sufficiently severe to warrant additional compensation beyond the \$3 million she has already been awarded, she is not entitled to additional compensation in this program. Therefore, the claim is denied.

## BACKGROUND AND BASIS OF CLAIM

Claimant was in the terminal at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. She states that, when the attack began, her aunt pushed her to the floor, and she felt “pinches” in her lower body where she was struck by grenade shrapnel. After the attack, Claimant was taken to a local hospital, where she underwent several surgeries to treat her wounds. Claimant remained at the hospital for approximately two weeks; she was then discharged and returned home for further treatment. In the years that followed, Claimant visited several doctors, complaining of pain and weakness in her legs and feet; the doctors confirmed that she had scarring on her lower body and had metallic fragments in her right leg and left foot.

Although Claimant was not among them, a number of the Lod Airport victims sued Libya (and others) in federal court in 2006. *See Franqui v. Syrian Arab Republic*, No. 06-cv-734 (D.D.C.). 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.

In 2010, the Claimant filed a claim under the January 2009 Referral, alleging that she had suffered physical injuries as a result of the Lod Airport attack. By Proposed Decision entered May 10, 2011, the Commission determined that Claimant was eligible for compensation under Category E of that Referral and awarded her a fixed sum of \$3 million. *See* Claim No. LIB-II-076, Decision No. LIB-II-044 (2011) (“Physical-Injury Decision”). Because Claimant did not file an objection to the Proposed Decision, the Proposed Decision automatically became the Commission’s Final Decision on June 20, 2011. *See* 45 C.F.R. § 509.5 (g) (2014).

The Legal Adviser referred an additional 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”). One category of claims from the 2013 Referral is applicable here. That category, known as Category D, 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.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of the third Libya Claims Program pursuant to the ICSEA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On May 2, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category D of the 2013 Referral, together with exhibits supporting the elements of her claim. Her submission also incorporated by reference the evidence she had previously submitted in connection with the physical-injury claim she made under the January 2009 Referral.

## DISCUSSION

### Jurisdiction

As an initial matter, the Commission must 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 the January 2009 Referral, 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 4. She therefore satisfies the nationality requirement here.

*Prior Award*

To fall within the category of claims referred to the Commission, a claimant must have received an award under either the January 2009 or November 2013 Referrals. The Commission awarded Claimant \$3 million based on her physical-injury claim under the January 2009 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*

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 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] injury” constitutes a “special circumstance warranting additional compensation.” In Claim No. LIB-III-021, Decision No. LIB-III-016, at 7 (Proposed Decision), 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.”

Importantly, in all of its “additional compensation” decisions under the 2009 Referral (and its 2013 Referral “additional compensation” decisions to date), the Commission addressed these 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. While noting that no amount of money can adequately compensate some victims for their injuries, the Commission recognized that \$3 million is “exceptionally high when compared to other claims 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 in more detail below, Claimant has not shown that her injuries are among the most severe in this program, 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 states that, on May 30, 1972, she was with her aunt inside the terminal at Lod Airport in Tel Aviv, Israel, when three armed terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. Claimant “heard a loud noise, similar to an explosion . . . [and] realized [they] were being attacked; gunshots and explosions were endless . . . .” Claimant states that, after her aunt “pushed [her] to the floor,” she “started to feel pinches in [her] leg and buttock, and when [she] put [her] hand there, it was covered with blood and skin.” After the attack ended, a civilian couple placed Claimant in their vehicle and drove away, at which point Claimant passed out. She states that she “woke up in the Assaf Harofeh Medical Center.”

Injuries Alleged: Claimant asserts that, as a result of the Lod Airport attack, she suffered “multiple grenade shrapnel wounds in both of [her] legs and in [her] left gluteal region[,]” and that the shrapnel wounds in her left leg resulted in a left ankle fracture. She states that the “deep grenade wound in the left buttock[] requir[ed] several skin grafts and surgeries, and result[ed] in large permanent hypertrophic deforming scars.” Claimant had made similar statements in 1977, when she stated during a medical examination that she underwent two operations in the “left gluteal region,” received a “soft dressing . . . for

the left foot[.]” and underwent two additional operations to remove shrapnel from her left foot and leg while hospitalized in Israel.

Claimant further asserts that she “returned home to Puerto Rico in a wheelchair” and was transported by ambulance to Hospital Santo Asilo de Damas (“Hospital Damas”), where she remained hospitalized for 40 days. She claims that, while there, she underwent “three more surgeries on [her] left gluteal region, including a pinch graft<sup>[1]</sup> on the left buttock.” Claimant states that a “metal splint was applied to her left leg for 45 days and she walked on crutches for two months,” although she does not specify whether any of the time she wore the splint or was on crutches was during her stay at Hospital Damas. She also claims that she received “daily physiotherapy for three months to treat injuries in her legs.” She notes that she was able to return to school around August 17, 1972, which was less than three months after the terrorist attack.

Claimant states that, in the years since the attack, she has had “problems standing or walking for long periods” and “chronic leg nerve pain, leg numbness and weakness.” She avers that the “numbness of [her] right leg and the dropped left foot prevented [her] from going to parties and events [where] dancing was involved.” She further states that the injuries “left [her] with severe scarring on the left gluteal and on [her] right leg, as well as scarring on [her] right ankle and [her] foot.” Claimant maintains that she “ha[s] always felt very self-conscious about [her] scars, especially when [she] was a teenager.”<sup>2</sup> She states that her scars have prevented her from wearing a bathing suit and going to the beach, which she enjoyed before the attack.

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<sup>1</sup> A pinch graft is a “harvesting technique in which small bits of partial or full-thickness skin are obtained by ‘pinching’ a fold of skin and cutting across its base.” *Stedman’s Medical Dictionary* 828-29 (28th ed. 2006).

<sup>2</sup> Claimant was fifteen years old at the time of the attack.

In addition, Claimant alleges that she began psychiatric treatment beginning sometime in 1977. Moreover, she asserts that the terrorist attacks of September 11, 2001, triggered nightmares and flashbacks of the Lod Airport massacre, and that she has been diagnosed with post-traumatic stress disorder (“PTSD”). She claims that her PTSD has “severely hurt [her] ability to work and [she is] currently unemployed.” Further, she claims that a lack of sleep, together with the nerve pain and weakness, resulted in fibromyalgia, which she also cites as a reason for her inability to work.

### *Supporting Evidence*

In support of her claim, Claimant has submitted , among other things, two of her own affidavits (dated February 19, 2010, and December 23, 2014, respectively), photos of her shrapnel wounds (both recent and from soon after the attack), and various medical records, some from the 1970s and others dated in 2003 or later. These medical records include those from Claimant’s initial treatment in Israel, various medical reports from Claimant’s treatment in Puerto Rico, and a number of letters sent to Claimant by the Israeli National Insurance Institute (“Insurance Institute”) during the first few years after the incident.<sup>3</sup>

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<sup>3</sup> Claimant has also provided a 1974 decision of the Superior Court of Puerto Rico addressing the distribution of *ex-gratia* funds that Japan provided to the Commonwealth of Puerto Rico for the benefit of Puerto Ricans harmed by the Lod Airport attack. The Special Commissioners appointed by the court established a point system for distributing those funds and awarded Claimant 1,500 points out of a possible total of 2,000. However, Claimant has not provided any evidence as to how the Special Commissioners made that determination. In particular, other Lod Airport victims in these Libyan claims programs have provided the related “Report From Special Commissioners,” a victim-specific document that provides details about how the Special Commissioners determined the point totals in individual cases. In any event, the Special Commissioners’ formula differs from the 2013 Referral’s mandate and the Commission’s standards for determining whether the severity of a claimant’s injuries warrants additional compensation in this program (as well as the 2009 Referral’s mandate and the Commission’s standard for physical-injury claims under the 2009 Referral). *See* Claim No. LIB-II-064, Decision No. LIB-II-073, 5-7 (2012) (discussing this same Report in the context of another Lod Airport victim); Claim No. LIB-II-088, Decision No. LIB-II-108, 4-6 (2012). In particular, the Special Commissioners could award considerable points for psychological harm, which is outside the purview of this Commission’s Libya claims programs. *Id.*; *see also* Claim No. LIB-II-128, Decision No. LIB-II-031 (2012). As Claimant’s aunt was killed and the medical records discuss the emotional toll the Lod Airport attack took on Claimant, many of the 1,500 points may well have been based on psychological harm.

The discharge summary from Assaf Harofeh Hospital indicates that Claimant was admitted on May 31, 1972, having sustained “a wound with skin loss in the area of the gluteus on the left side.” The summary further indicates that the “wound was closed but did not scab over.” It states that “[c]onservative treatment was begun with auzol and a golonet dressing[.]”<sup>4</sup> and that there was “an indication for [a] skin graft.” Claimant was discharged on June 13, 1972, with “a recommendation for further surgical treatment in Puerto Rico.” Photographs apparently taken around the time of the attack clearly depict significant scarring on Claimant’s left buttock.

Although Claimant has not submitted any records from Hospital Damas, other medical records in the file evidence that Claimant received medical treatment after returning to Puerto Rico. A report from Dr. Jorge Bonilla Colon, dated August 29, 1973 (about fifteen months after the attack), notes that Claimant came to see him “because of pain in her legs and . . . [a] fracture in her left foot secondary to [shrapnel] fragments.” Her “chief complaint [was] pain in both legs with [prolonged] standing and walking.” However, Dr. Colon noted that she had “no abnormalities in gait or posture.” Nevertheless, he did make note of numerous scars on Claimant’s legs and of pieces of shrapnel in her right leg and left foot. On her left gluteus, he noted “[l]arge irregular atrophic and hypertrophic scars with loss of skin. . . . [m]ultiple scars from donor pinch grafts[.]” and a hypertrophic, quarter-sized scar that was “tender to palpation.” On her right leg, Dr. Colon noted at least three scars—measuring ½” x ¼”, 1” x ½”, and 1¼” x ¼”—which were also “tender to deep palpation.” On the left foot, he noted a 1” irregular scar on her ankle. He added in his notes that there was “no detectable limitation of motion in the left foot or ankle . . . [nor] in the right lower extremity.”

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<sup>4</sup> Claimant does not explain what either “auzol” or a “golonet dressing” is, and our independent research has found nothing to help explain these terms.



Dr. Colon also reported the results of x-rays performed on Claimant's right leg and left foot. The image of the right leg revealed a "metallic foreign body," measuring ¼" by ¼", "posterior to the tibia . . . ." In the left foot, the x-ray revealed "an impacted metallic fragment deep in the neck of the talus measuring approximately ¼" in diameter . . . [and] a smaller metallic fragment adjacent to the navicular." At the bottom of the report, under the heading "Prognosis," Dr. Colon states, "For partial permanent disability of both lower extremities and intermittent pain." Despite this reference to "partial permanent disability," however, the report provides no disability rating.

Claimant has also submitted a letter from Juan Llompart, M.D., who examined Claimant in September 1977, about five-and-a-half years after the attack. In his letter, which was addressed to "Attorney Vincente Ydrach," Dr. Llompart indicated that Claimant complained of "weakness in both lower extremities[,] numbness in the right leg, difficulty walking or standing for long periods or distances, a "[f]eeling of instability in the left foot[,] and "[r]esidual deformity" and pain in the "left gluteal region." The first section of the letter, titled "History," is largely consistent with Claimant's present assertions about her initial treatment: it references her time at Hospital Damas upon returning to Puerto Rico and the surgeries she underwent, including three skin graft procedures, her use of a leg splint and crutches for several weeks, and her subsequent physiotherapy for a three-month period.

Dr. Llompart's letter further notes that Claimant "walks without a limp[,] but also notes numerous scars consistent with those described by Dr. Colon four years earlier. In Claimant's left gluteal region, he identifies an "irregular depressed scar about 5" by 1½"[,]" a round scar measuring 1¼" in diameter, and multiple other scars "measur[ing] in total approximately 3" by 1½". On Claimant's right leg, Dr. Llompart notes numerous

healed scars between ¾” and 1” in length. He also notes that Claimant suffers from hyperesthesia<sup>5</sup> in her right leg, but also notes that the right “hip and knee [are] within normal limits.” He observes “[n]o scar visible in the left leg[,]” although he does note a healed scar on the left ankle measuring about 1” in length. He also observes a 1 cm scar on her left foot. He adds, however, that the “[f]unctions and motions of the left ankle and foot were found to be within normal limits.” Dr. Llompart further indicates that x-rays of the left foot reveal “a small metal fragment within the talus and another . . . within the navicular bone.”

Dr. Llompart opines that Claimant “has been left with a permanent degree of residual disability in relation to the right lower extremity” that he estimates at “10% in regards to the complaints of weakness and numbness.” He adds that the “scars of the lower extremities constitute a moderate degree of permanent cosmetic defect and the scars of the left gluteal region constitute a marked permanent residual cosmetic defect.”

Claimant has also submitted various medical reports from Dr. Fernando Norona M.D., a neurologist, documenting office visits from December 2003 to November 2004, more than three decades after the attack. During one of these visits, Claimant complained of frequent headaches, which she claimed to have had for years and which had become more frequent. She also noted that she had “[a lot] of stress in her life especially in the last one year.” Claimant noted that she had suffered most of her emotional problems since a car accident in February 2003, when she was “not hospitalized but [was] taken to [the] ER.” The report indicates that Claimant “[h]as PTSD and sees a psychiatrist who treats her for depression.” During these visits, Claimant also complained of “pain down the left leg to the foot[,]” “pain and numbness” in her left calf and sole, lower back pain

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<sup>5</sup> Hyperesthesia is an “[a]bnormal acuteness of sensitivity to touch, pain, or other sensory stimuli.” *Stedman’s Medical Dictionary, supra*, at 920.

for the two years preceding December 2003, and neck pain for the two months preceding her initial visit on December 3, 2003. She also complained of right leg pain. Claimant further complained of numbness, weakness, and tingling in her hands; however, one of the reports notes that Claimant was diagnosed with carpal tunnel syndrome in approximately 1993, more than two decades after the attack. At the time of these visits (i.e., 2003-04), Claimant wore splints for this condition, but she claimed that the condition was getting worse and that the splints no longer helped.

Other relatively recent records confirm the basic nature of Claimant's injuries. A December 2009 radiological examination revealed a "7 mm x 7 mm metallic foreign body[,]” as well as “[t]hree small metallic fragments” in her right calf. It also showed several metallic fragments in her left foot, including one measuring 1 cm by 1.2 cm. Bone deposits around the shrapnel “suggest[ed] that this is an old injury.” Claimant has also submitted two photographs, said to be from May 2014, showing some of the scars on her right leg. In addition, Claimant has provided the report of her treating psychiatrist, undated but apparently from after September 2005, detailing her psychiatric conditions, including PTSD and depression, which are attributed to the Lod Airport attack.

Finally, Claimant has provided various records from the Israeli National Insurance Institute from the years following the incident. These include a letter dated April 29, 1974, informing Claimant of its decision to award benefits according to the following schedule: a 100% degree of invalidity between June 14 and July 31, 1972; a 30% degree of invalidity from August 1 to August 31, 1972; and a “permanent degree of invalidity of 20%” as of September 1, 1972.

*Application of Special Circumstances Factors to Evidence*

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, Decision No. LIB-II-111, at 5 (2011). 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 these Libyan claims 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.

Nature and Extent of Injury: The evidence is insufficient to show that the initial injuries Claimant suffered in the Lod Airport attack were among the most severe in this program. She certainly suffered significant physical injuries in the attack, including numerous shrapnel wounds to her legs, which left scars and several small fragments of metal in both her right leg and her left foot and gluteus. She also spent a substantial amount of time in the hospital (about two weeks in Israel and another month-and-a-half after returning to Puerto Rico), during which she underwent numerous procedures, including skin grafts to her left buttock, and surgeries to remove shrapnel. She also wore a splint for approximately two months, and underwent three months of physiotherapy.

The record contains little direct evidence, however, of the severity of Claimant’s physical injuries. Moreover, much of the circumstantial evidence we do have suggests that Claimant’s injuries were not sufficiently severe to warrant additional compensation beyond the \$3 million she has already received. To start, the medical records from 1972,

the time of the attack itself, make reference only to the wounds in her left gluteal region and mention only treatment with dressing and “auzol,” with no indication of what “auzol” is. The records make no mention of injuries elsewhere on her body (e.g., her right leg or her left foot or ankle), and though other evidence indicates that she had injuries in these parts of her body, the fact that they are unmentioned in the 1972 hospital records suggests they were not severe enough to warrant mention. Moreover, Claimant wrote a letter to her parents while still in Israel, in which she says, “In reference to my state of health, I can say that I’m normal; I only have some wounds on my legs and one on my left glute.”

The evidence about her hospitalization in Puerto Rico also suggests that Claimant’s injuries were not severe, or is at best equivocal on that question. For example, the reference to her having had “pinch” grafts suggests injuries that did not damage the structures of the gluteus. Moreover, the fact that Claimant had to have shrapnel removed says little about how severe her shrapnel injuries were. In addition, despite Claimant’s contention that her left foot was fractured, this injury is not documented in any of the medical records (including the x-ray reports). And while Claimant may have undergone physiotherapy for some time after the incident, the nature of this therapy is unclear and does little to establish how severe Claimant’s injuries were. Moreover, during her 1973 visit with Dr. Colon—only 15 months after the incident—Claimant is described as a “[w]ell-developed, well nourished female adolescent in no distress.” Further, as noted above, in 1977, Dr. Llompart indicated that Claimant’s right leg and left foot are “within normal limits.”

In sum, the nature and extent of Claimant’s initial injuries are not, by themselves, among the most severe when compared with all the other claimants who have sought additional compensation in these Libyan claims programs. The Commission has

previously denied additional compensation to other claimants whose physical injuries were similar to or worse than Claimant's. *See, e.g.*, Claim No. LIB-II-148, Decision No. LIB-II-185 (2012) (denying claim for additional compensation where claimant had bullet wounds to his chest, buttocks and leg; had spent eight days in the hospital after the terrorist attack; had to fly back home while lying on his abdomen and then spent another four weeks in a hospital near his home; and had medical records showing continued pain in his lower leg, thigh and back for the first few years after the attack); 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, Decision No. LIB-II-111, *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).

Impact on Claimant's Major Life Functions and Activities: The second factor—the impact on Claimant's major life functions and activities—also supports a denial of this claim. Although Claimant describes effects on her life, including those she continues to experience to this day (more than forty years later), the degree to which her Lod Airport attack injuries have impaired her major life functions and activities is not clear. Indeed, the medical records suggest that the impact may have been relatively minor. For example, as early as 1973, Dr. Colon notes that there is “no detectable limitation of motion in the left foot or ankle . . . [or] in the right lower extremity.” And despite the presence of small shrapnel fragments in Claimant's right leg, there were “no other significant findings in the leg or ankle.” Similar observations are made by Dr. Llompart in his 1977 letter. He characterized Claimant as a “well developed woman who walks

without a limp.” He also stated that Claimant’s right lower extremity and left foot and ankle were “within normal limits.” Given these findings, the evidence does not support the conclusion that Claimant’s mobility has been limited in any significant way.

Claimant’s subsequent troubles with her hand, lower back, and neck all appear to be unrelated to the Lod Airport attack. The numbness, weakness, and tingling in Claimant’s hands starting in 2003 (more than thirty years after the attack) seems more likely related to Claimant’s diagnosis of carpal tunnel syndrome around 1993, which is mentioned in Dr. Norona’s report. In any event, no evidence connects it to the 1972 attack. There is also no evidence that Claimant’s lower-back and neck pain are in any way related to the Lod Airport attack either.

Although Claimant offers two pieces of evidence suggesting some degree of disability, they are insufficient to show that her Lod Airport injuries have had a significant impact on any of her major life functions or activities. The first is the April 1974 Israeli National Insurance determination that Claimant had a 20% “permanent degree of invalidity” as of September 1, 1972. It is not clear, however, whether this pertains to the whole body or to one area only. Moreover, a determination of permanent disability made in April 1974 (less than two years after the attack) is not conclusive evidence that Claimant has been permanently disabled for the more than four decades since then. The second is Dr. Llompart’s 1977 conclusion that Claimant had a 10% “permanent degree of residual disability in relation to the right lower extremity . . . in regards to the complaints of weakness and numbness.” Without more, however, “weakness and numbness” in one leg does not rise to the level of an impairment that warrants additional compensation in this program. We have previously noted that the existence of a disability rating, by itself, does not warrant additional compensation in

these Libya claims programs, *see* Claim No. LIB-II-116, Decision No. LIB-II-166, at 5 (2012) (Final Decision), and that conclusion applies equally here.

The fact that Claimant has provided no medical records from the period between 1977 and 2003 also raises questions about the impact that Claimant's physical injuries from the attack have had on her major life functions and activities. While the available records indicate that Claimant does experience some residual pain and had at one point been assigned two disability ratings (albeit of differing percentages), the absence of records from this 26-year period makes it difficult to determine the actual impact Claimant's injuries have had on her daily life. They also make it difficult to determine how much of Claimant's pain and weakness might be attributable to causes other than the Lod Airport attack, such as her carpal tunnel syndrome or her 2003 car accident.

One other piece of evidence suggests that the physical injuries Claimant suffered in the Lod Airport attack may not have led to any significant impact on her major life functions and activities: she worked professionally for more than 30 years after the incident.

Finally, Claimant cannot rely on the evidence of mental and emotional harm she suffered, because the Commission has consistently held that claims for such harm, including PTSD, are not compensable as a physical injury in these Libyan claims programs. *See* Claim No. LIB-III-088, Decision No. LIB-III-019, at 28 (2015) (Proposed Decision). Thus, to the extent Claimant seeks compensation for her PTSD, depression, or any other mental injury or resultant ailment caused by the Lod Airport attack, she cannot recover for such injuries in this program. *See id.*



In sum, based on the current record, it does not appear that Claimant's physical injuries have had a significant enough impact on her major life functions and activities to warrant additional compensation in this program.

Disfigurement: The third factor—the degree of disfigurement—also supports our conclusion that the severity of Claimant's injuries is not a special circumstance warranting additional compensation. Disfigurement has been an important factor supporting an award of additional compensation only when the disfigurement has been significant. *See, e.g.*, Claim No. LIB-III-021, *supra*, at 17 (finding severe disfigurement to claimant who lost both of her legs and has to wear prostheses); Claim No. LIB-II-116, *supra*, at 5 (denying claim where disfigurement was not a prominent feature of claimant's overall outward appearance). Although the evidence is clear that Claimant had large visible scars on her left buttock and still may have some scars there and on her left calf, there is no indication that these scars are disfiguring to the extent observed in claims where the Commission has awarded additional compensation on the basis of disfigurement. *See, e.g.*, Claim No. LIB-II-174, Decision No. LIB-II-180 (2013) (Final Decision). Claimant's scarring is thus insufficient to support an award of additional compensation.

CONCLUSION

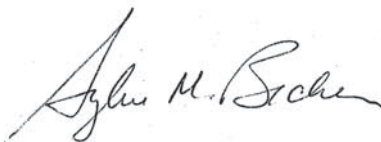
Having considered all of Claimant's evidence in light of the severity of the injuries suffered by all the claimants who have sought additional compensation in these Libyan claims programs, the Commission concludes that the severity of Claimant's injuries does not rise to the level of a special circumstance warranting additional compensation. While we sympathize with all that Claimant has endured, she is not entitled to additional compensation beyond the \$3 million the Commission has already awarded her. Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, July 16, 2015  
and entered as the Proposed Decision  
of the Commission.



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Anuj C. Desai, Commissioner



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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).