

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-109

Decision No. LIB-II-112

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is for additional compensation based on the alleged severity of physical injuries suffered by 5 U.S.C. §552(b)(6) at Lod Airport in Tel Aviv, Israel on May 30, 1972.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009,*

from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission ("January Referral").

The present claim is made under Category D. According to the January Referral, 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 [the Department of State's] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to [the Department of State's] December 11, 2008 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 Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 6. Attachment 1 to the January Referral lists the suits comprising the Pending Litigation.

The January Referral, as well as a December 11, 2008 Referral Letter ("December Referral") from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* ("Claims Settlement Agreement"), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from

asserting or maintaining such claims, terminated any pending suit within the terms of the Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

On October 16, 2009, the Commission adjudicated claimant's physical injury claim under the December Referral. In its decision, the Commission determined that claimant was injured as a result of bullet wounds to her right foot. Further, the Commission concluded that these injuries—which required immediate surgery on claimant's right foot and a hospital stay of several days—met the Commission's standard for physical injury and, consequently, that the claimant was entitled to compensation in the amount of \$3 million. *Claim of* ^{5 U.S.C. §552(b)(6)}, Claim No. LIB-I-032, Decision No. LIB-I-025 (2009) (entered as Final on November 23, 2009).*

BASIS OF THE PRESENT CLAIM

On June 22, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts a claim for additional compensation under Category D of the January Referral, along with exhibits supporting the elements of her claim, including evidence of her U.S. nationality, her receipt of an award under the December Referral, and the extent of her injuries. Specifically, claimant asserts that the “severe foot wound”

* In its Proposed Decision, the Commission erroneously spelled claimant's name ^{5 U.S.C. §552(b)(6)}. The correct spelling of claimant's name is ^{5 U.S.C. §552(b)(6)}.

she suffered at Lod Airport and the “accompanying psychological trauma warrants further compensation beyond the initial fixed amount of three million dollars.” The evidence submitted includes claimant’s affidavit dated July 27, 2011, medical records indicating the treatment received by claimant for her injuries, and a 2002 newspaper article describing claimant’s experience during the attack and discussing her life in the years since.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited to the category of claims defined under the January Referral; namely, claims of individuals who: (1) are U.S. nationals; (2) received an award under the December Referral; and (3) have dismissed their respective Pending Litigation cases against Libya. January Referral, *supra*, ¶ 3.

Nationality

The Commission determined in its decision on claimant’s injury claim under the December Referral that the claim was owned by a U.S. national from the time of the incident continuously through the effective date of the Claims Settlement Agreement. That determination applies equally to satisfy the nationality requirement here.

Award Under the December Referral

To fall within the category of claims referred to the Commission, the claimant must have received an award under the December Referral. As noted above, the Commission awarded the claimant \$3 million based on her physical injury claim under

the December Referral. Accordingly, the Commission finds that the claimant has satisfied this element of her Category D claim.

Dismissal of the Pending Litigation

The January Referral also requires that the claimant provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, *supra*, ¶ 3. The Commission determined, in its decision on claimant's physical injury claim under the December Referral, that the Pending Litigation in question, *Franqui, et al. v. Syrian Arab Republic, et al*, Case No. 06-cv-734, filed in the United States District Court for the District of Columbia, had been dismissed under Plaintiffs' Stipulation of Dismissal with Prejudice. That determination also applies here.

In summary, therefore, the Commission concludes, on the basis of the foregoing, that this claim is within the Commission's jurisdiction pursuant to the January Referral and is entitled to adjudication on the merits.

Merits

Category D of the January Referral requests, in pertinent part, that the Commission determine whether "the severity of the injury is a special circumstance warranting additional compensation." In making this determination, the Commission considers the following. First, the Commission is familiar with the nature of all of the injuries that fall under Category D; as indicated above, in its adjudication of claims under the December Referral, the Commission has already examined and awarded compensation for all of the eligible Category D claims. Second, the Commission's standard for physical injury in this program sets a relatively low threshold for compensable injuries: in order to meet the Commission's standard in this program, a

claimant need only establish that he or she suffered an injury that is discernible, and more significant than a superficial injury. *See Claim of* 5 U.S.C. §552(b)(6) , Claim No. LIB-I-001, Decision No. LIB-I-001, at 8-9 (2009). Third, the amount of compensation awarded for compensable injuries in this program—a fixed amount of \$3 million for each compensable injury—is, in the Commission’s experience, exceptionally high when compared to other claims programs, and extraordinarily high for compensable injuries that were not severe, but which nonetheless met the Commission’s standard. Therefore, to the extent that a monetary award can ever adequately compensate for a physical injury, the eligible claimants in this program have, for the most part, been adequately compensated via the Commission’s awards under the December Referral.

Considering the foregoing, the Commission concludes that only the most severe injuries will constitute a special circumstance warranting additional compensation under Category D. In determining which injuries are among the most severe, the Commission considers the nature and extent of the injury itself, the impact that the injury has had on claimant’s ability to perform major life functions and activities—both on a temporary and on a permanent basis—and the degree to which claimant’s injury has disfigured his or her outward appearance. These factors are applied to the present claim as set forth below.

First, as noted above, the claimant bases her Category D claim for additional compensation on the alleged severity of her foot injury and the “accompanying psychological trauma.” With regard to the portion of this claim associated with psychological trauma, the Commission notes that the January Referral limits Category D to “claims of U.S. nationals . . . for physical injury[.]” where “the Commission determines that the severity of *the* injury is a special circumstance . . .” (emphasis added).

The Commission finds that “the injury” referred to under this Category is the injury for which an award was issued by the Commission under the December Referral. In this case, as noted above, the Commission determined that the compensable injuries under the December Referral were the bullet wounds to the claimant’s right foot, not the “severe, permanent emotional injuries” for which she also claimed compensation. Moreover, the Commission has previously determined that compensation under the December Referral is limited to claims for physical, not psychological, injury. *See, e.g., Claim of*

5 U.S.C. §552(b)(6), Claim No. LIB-I-033, Decision No. LIB-I-046 (2011) (Proposed Decision); *Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-I-041, Decision No. LIB-I-030 (2010). For these reasons, claimant’s request for additional compensation for psychological trauma is rejected.


Second, in support of her claim for additional compensation relating to her foot injury, claimant has submitted, among other documents, a supplemental declaration and additional medical records. In her affidavit, claimant asserts that, due to the injury to her foot, she “suffer[s] from ongoing numbness and pain in [her] big toe” and “also experience[s] pain and cramping in [her] foot from time to time.” Claimant states that “for a long time after being injured [she] walked with a limp” and “also had difficulty standing for several years.” She further explains that “when [she] had to play sports as part of [her] physical education class at school, [her] foot gave [her] trouble, because [she] felt pain on the sole of [her] foot, and [she] felt something like a painful current, and [her] big toe would go numb.” Claimant asserts that “[t]oday, when [she] walk[s] long distances, [she] experience[s] pain in [her] foot, regardless of the type of shoes [she]

wear[s].” Claimant also alleges that her injuries cause problems with her balance, and that this in turn caused her to sprain her left foot and ankle in May 2011.

Considering the totality of the evidence submitted, the Commission is not persuaded either that any of the claimant’s major life activities have been limited in a sufficiently significant way as a result of the injury to her foot, or that there was a sufficiently significant disfigurement to her outward appearance so as to qualify her for additional compensation. In this regard, the Commission notes that from the date of the attack on May 30, 1972 through the alleged ankle injury in May 2011, there is no evidence of any ongoing treatment to identify or treat in any way the impairments she alleges resulted from the initial injury to her foot. Further, there is no indication in the record of her May 2011 treatment that the injury she sustained to her left ankle was in any way connected to the 1972 injury. Consequently, the Commission concludes that the severity of the injury in this claim does not rise to the level of a special circumstance warranting additional compensation under Category D.

Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, November 17, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

**This decision was entered as the
Commissioner's Final Decision on
JAN 06 2012**

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2010).