

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-149

Decision No. LIB-II-157

Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya")
is based upon physical injuries said to have been sustained by 5 U.S.C. §552(b)(6)
at Lod Airport in Tel Aviv, Israel on May 30, 1972.

Under subsection 4(a) of Title I of the International Claims Settlement Act of
1949 ("ICSA"), as amended, the Commission has jurisdiction to
receive, examine, adjudicate, and render a final decision with respect to
any claim of . . . any national of the United States . . . included in a
category of claims against a foreign government which is referred to the
Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

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

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

The present claim is made under Category E. According to the January Referral, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 ("Covered Incidents"), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

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

Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

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

BASIS OF THE PRESENT CLAIM

On July 2, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts a claim under Category E of the January Referral, along with exhibits supporting the elements of her claim, including evidence of claimant's U.S. nationality, her presence at the scene of the terrorist incident, and her alleged physical injuries for which she now claims compensation.

The claimant states that she was present in the terminal at Lod Airport in Tel Aviv, Israel on May 30, 1972, when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. She alleges that, as a result of the attack, she suffered "significant physical injuries to her head and lip[,] and that she was "bleeding through her own mouth." According to claimant, she was taken to a local hospital immediately following the incident, where doctors placed ice on her forehead and "cleaned the inside of [her] mouth."

Claimant alleges that "the injury to her lip resulted in permanent scarring" which is still visible today, and that ever since the incident, she "has suffered from lasting

trauma and psychiatric injuries as a result of the Lod Airport massacre, including anxiety, headaches, separation anxiety, and nightmares.”

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited to the category of claims defined under Category E of the January Referral; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation against Libya. January Referral, *supra* ¶ 7.

Nationality

In the *Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order to meet the nationality requirement, the claimant must have been a national of the United States, as that term is defined in the Commission’s authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. To meet this requirement, the claimant has provided a copy of her current U.S. passport, indicating that she was born in Puerto Rico. Based on this evidence, the Commission determines that the claim was owned by a U.S. national at the time of the incident and has been so held until the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral. January Referral, *supra*, ¶ 7. This list includes the “May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.” *Id.*, Attachment 2, ¶ 1. In her Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of the May 30, 1972 Lod Airport terrorist attack. The Commission therefore finds that the claimant has satisfied this element of her claim.

Pending Litigation

Finally, Category E of the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral, *supra*, ¶ 7. Attachment 2 to the January Referral identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Franqui* case. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which establishes that she was not a party to that litigation. In addition, claimant has averred under oath in her Statement of Claim that she was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has also satisfied this element of her claim.

In summary, 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

Standard for Physical Injury

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet “the standard for physical injury or wrongful death, as appropriate, adopted by the Commission” for purposes of this referral. January Referral, *supra*, ¶ 7. The Commission held in *Claim of* 5 U.S.C. §552(b)(6)

, Claim No. LIB-II-039, Dec. No. LIB-II-015 that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

Id. at 6-7. The present Category E claim must likewise meet this standard to be compensable.

Physical Injury

According to her Statement of Claim and accompanying exhibits, claimant, who was two years old at the time of the incident and traveling with her parents, was standing with her mother near the baggage carousels when terrorists opened fire and tossed hand grenades at the crowd gathered in the baggage claim area. Claimant states that “when the shooting began, my mother threw me to the floor I fell face down, and my forehead and mouth were hit hard on the concrete floor.” According to claimant, this resulted in her “cutting through her lip.” Claimant states that a man “threw himself on top of her

mother and that she could hardly breathe with all that weight on her.” She alleges that, “after the shooting stopped, someone pulled the man off of me and my mother,” and that shortly thereafter, she “was taken to a hospital for treatment.” She further states that “she was crying and afraid because she had blood coming out of her mouth”

Although claimant does not recall the name of the hospital where she was taken, she recently stated to an examining physician that “[d]octors at the hospital checked her, all over her body, especially . . . her forehead and mouth. They put ice on her forehead and cleaned the inside of her mouth with ‘band-aids.’” According to claimant’s mother, who was also at the hospital, claimant was brought to her “with a bandage around her head. She had bitten through her lip and some of her teeth were loose.” In addition, claimant’s father is alleged to have said, according to Alberto Folch, M.D., a physician who flew to Israel from Puerto Rico shortly after the incident, that “his daughter had been bandaged with gauze under her chin such that it looked that she was wearing a surgical bonnet.” Finally, claimant states that “the injury to her lip resulted in permanent scarring that she still has to this day.”

In support of her claim, claimant has provided, *inter alia*, the report of a medical examination conducted by Dr. Folch in August 2011; her own affidavit describing the incident and her physical injuries; copies of newspaper articles discussing the Lod Airport attack and identifying claimant as one of those present during the attack; affidavits from claimant’s mother and two other travelers who were with claimant and her family during the incident; a photograph purportedly depicting the scars claimant alleges resulted from the physical injuries she sustained to her face; a contemporaneous photograph depicting the Lod Airport terminal shortly after the attack; and the report of a

medical examination by Boyd H. Collazo, M.D., a physician in Puerto Rico, conducted in April 2010 (resulting in a diagnosis of post-traumatic stress disorder ("PTSD")).

At the outset, it should be noted that no contemporaneous medical records have been provided in support of this claim. Moreover, none of the newspaper articles submitted makes reference to any physical injuries suffered by claimant during the attack (although they do confirm claimant's account of how her mother threw her to the floor to shield her from gunfire and shrapnel). Further, although Dr. Callazo's more recent medical report contains a detailed narrative from claimant concerning the incident, no mention is made in the "Present Medical Evaluation" portion of the report of any observable physical injuries; rather, the only diagnosis made was of PTSD, and the bulk of the report is dedicated to discussing this finding.

The report of Dr. Folch's August 2011 medical examination does, however, note the presence of "two scars on [claimant's] face[,] with one scar being "an irregular, jagged scar of about three inches long at the level of her chin[,] while the other is described as "a smaller scar above the left lower lip on the left extreme." Dr. Folch notes that the scar on the lip "has lost skin pigmentation." He also notes that "[t]he appearance and location of the scar on the lip conforms to Ms. Muñoz's explanation that she received them when she hit the floor face down at the Lod airport. The dispigmented wound of the lip is consistent with an injury to the lip of the left lower canine tooth." Dr. Folch further indicates that "Ms. Muñoz explained to me that the wound on her chin is an old wound and that she cannot recall how she received this wound."

The photograph of claimant's face submitted as part of the claim file does not assist the Commission; whether because of the quality of the photograph or otherwise, it

does not depict the scarring alleged. Moreover, nowhere in claimant's submission does she indicate how long she remained in the hospital, or whether she was admitted for inpatient care or was simply treated on an outpatient basis. At most, it would appear that claimant was treated for only minor physical injuries after being brought to the hospital, and that she was released the same day. The absence of contemporaneous medical records, or indeed any medical records between 1972 and 2010, makes it difficult for the Commission to conclude otherwise. Furthermore, claimant has not provided any records of further treatment for her alleged physical injuries upon her return to Puerto Rico. Indeed, the most recent medical record provided is the report of Dr. Collazo's April 2010 medical examination. In this regard, it should be noted that in proceedings before the Commission, the burden of submitting sufficient evidence lies with the claimant. Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. § 509.5(b) (2011).

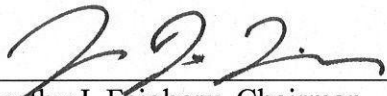
In this case, based on the entirety of the evidence, the Commission finds that the claimant has failed to provide evidence sufficient to establish that she "suffered a discernible physical injury, more significant than a superficial injury"; that she "received medical treatment for the physical injury within a reasonable time"; and that the injury be verified by medical records, as required under the Commission's physical injury standard.

In light of the foregoing, the Commission is constrained to conclude that the claimant, ^{5 U.S.C. §552(b)(6)}, does not qualify for compensation under

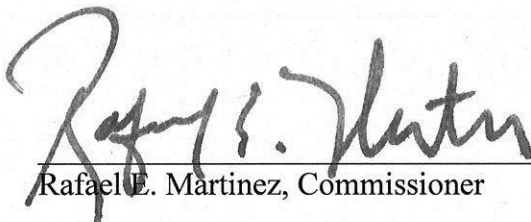
Category E of the January Referral. Accordingly, her claim must be and is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

Dated at Washington, DC, May 16, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

**The decision was entered as the
Commission's Final Decision on**

July 12, 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) (2011).