

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

In the Matter of the Claim of	}	
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	}	
	}	
ESTATE OF LORENZO ALEXANDER HARRIS,	}	Claim No. LIB-II-157
DECEASED; PRISCILLA HARRIS, ADMINISTRATOR	}	
	}	Decision No. LIB-II-109
	}	
Against the Great Socialist People's	}	
Libyan Arab Jamahiriya	}	

Counsel for Claimant: Elizabeth Smith, Esq.
Motley Rice LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the ESTATE OF LORENZO ALEXANDER HARRIS for additional compensation based on the alleged severity of physical injuries suffered by Mr. Harris as a result of the bombing of the LaBelle Discotheque in Berlin, Germany, on April 5, 1986.

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 April 7, 2011, the Commission adjudicated Mr. Harris's physical injury claim under the December Referral. In that claim, the claimant asserted that Mr. Harris had sustained two separate injuries as a result of the incident — hearing loss and lung disease. The Commission concluded that the injury to Mr. Harris's hearing met the Commission's standard for physical injury. However, with regard to the assertion that Mr. Harris suffered lung disease as a result of the attack, the Commission concluded that a causal connection between the asserted disease and the attack had not been established. Further, the Commission determined that a one-half interest in that claim had been held by a non-U.S. national. Consequently, the amount of compensation awarded by the Commission in that claim was reduced from \$3 million to \$1.5 million. *Claim of ESTATE OF LORENZO ALEXANDER HARRIS, DECEASED; PRISCILLA HARRIS, ADMINISTRATOR*, Claim No. LIB-I-040, Decision No. LIB-I-049 (2011) (entered as Final on May 13, 2011).

BASIS OF THE PRESENT CLAIM

On July 6, 2010, the Commission received from claimant a completed Statement of Claim in which it asserts a claim for additional compensation under Category D of the January Referral, along with exhibits supporting the elements of its claim, including evidence of the U.S. nationality of Mr. Harris as well as that of the beneficiaries of his estate and the extent of the injuries sustained by Mr. Harris. The evidence submitted includes a statement by Mr. Harris's widow, Karen Gertrude Harris, and a Statement of Special Circumstances of Injuries along with medical records and opinions.

The Commission notes that in order to meet the filing deadline under Category D the claimant filed this claim prior to the Commission's issuance of its decision under the December Referral. In claimant's initial submission — submitted prior to the Commission's December Referral decision — it asserted that “[a]dditional compensation ... is certainly warranted” based on Mr. Harris having “suffered for three and a half years from a declining lung condition that ultimately caused his death.” In the claimant's submission after the Commission's December Referral decision, it added a claim for additional compensation based on the hearing loss suffered by Mr. Harris as a result of the attack.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA, 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

As noted above, the Commission determined in its decision under the December Referral that only a one-half interest in that claim had been held by U.S. nationals from the time of the incident continuously through the effective date of the Claims Settlement Agreement, and that the other one-half interest had been held by a non-U.S. national. That determination applies equally 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 \$1.5 million based on the claim for Mr. Harris's physical injury under the December Referral. Accordingly, the Commission finds that the claimant has satisfied this element of its 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 injury claim under the December Referral, that the Pending Litigation in question, *Harris v. Socialist People's Libyan Arab Jamahiriya*, Case No. 06-cv-732, filed in the United States District Court for the District of Columbia, had been dismissed under an Order dated May 5, 2009. That determination also applies here.

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

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 asserts claims under Category D for additional compensation based on both the alleged lung disease and hearing loss suffered by Mr. Harris. With regard to the portion of this claim associated with the alleged lung disease, 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 injury under the December Referral was the hearing loss suffered by Mr. Harris, not the alleged lung disease for which compensation was also sought. Accordingly, claimant's request for additional compensation for Mr. Harris's lung condition is rejected.

Second, in support of its Category D claim for additional compensation relating to the loss of hearing suffered by Mr. Harris, claimant has submitted, among other documents, a sworn statement of Karin Gertrude Harris — Mr. Harris's widow — and

audiometric results relating to hearing tests conducted before the bombing along with an interpretation of the result dated April 5, 1986, the day of the bombing.¹ In her statement, Mrs. Harris asserts that the impairment to Mr. Harris's hearing, following the LaBelle bombing, caused him to experience "ear pain and pressure" and "he could no longer tolerate any loud noise." She further asserts that due to his inability to tolerate loud noises, Mr. Harris was unable to "attend ... sporting events, which he attended regularly before the bombing" and that he "experienced these ear problems until his death." In support of claimant's assertions, it has also submitted an audiologist's interpretation of the result of an audiometric test dated April 5, 1986. In the audiologist's opinion the claimant suffered a "[m]ild degree of hearing loss at the left ear [and] [m]oderate to severe hearing loss at the right ear."

Considering the totality of the evidence submitted, the Commission is not persuaded that any of Mr. Harris's major life activities were limited in a sufficiently significant way as a result of the hearing loss so as to qualify for additional compensation. In this regard, the Commission takes particular note of the fact that from the date of the attack on April 5, 1986 and his medical examination that day, through Mr. Harris's death in 1990, there is no evidence of any ongoing treatment to identify or treat in any way the hearing impairment claimant alleges resulted from the damage to Mr. Harris's hearing. 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.

¹ The audiogram results were submitted in support of the claim under the December Referral.

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
Commission'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).