

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-190

Decision No. LIB-II-093

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) during the hijacking of Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 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 Letter”).

The present claim is made under Category E. According to the January Referral Letter, 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 Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) 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 Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On August 20, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts a claim under Category E of the January Referral Letter, along with exhibits supporting the elements of her claim. This submission included 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 on board Pan Am Flight 73 in Karachi, Pakistan on September 5, 1986, when she and other passengers were held hostage by armed hijackers for sixteen hours while the plane sat on the tarmac. Claimant states that, after she escaped from the plane via an emergency exit, an ambulance that had pulled up next to her ran over her right ankle after she fell to the ground attempting to board the vehicle. As a result, claimant asserts that she suffered a "[k]nee injury requiring orthoscopic surgery, fractured right ankle, and badly bruised thigh." Claimant states that she was taken to a local hospital, but refused treatment there and instead stayed in a hotel where she "self-treated . . . with ice and elevation[.]" She claims that, after returning to the

United States shortly thereafter, she sought medical treatment that included x-ray examinations, which revealed “a fracture in the ankle and bone chips in the knee.”

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 Letter; in this case, Category E, 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 case against Libya. January Referral Letter, *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 expired U.S. passport, valid from August 1986 to July 1996, and a copy of her current U.S. passport, both of which show her place of birth in New Jersey. Based on this evidence, the Commission determines that the claim was owned by a U.S. national at the time of the incident continuously through 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 Letter. January Referral Letter, *supra*, ¶ 7. This list includes the “September 5, 1986 hijacking of Pan Am flight 73, as alleged in *Patel v. Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 06-cv-626.” *Id.*, Attachment 2, ¶ 9. In her Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of the September 5, 1986 Pan Am flight 73 hijacking. The Commission therefore finds that the claimant has satisfied this element of her claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Patel* case. Claimant has stated under oath in her Statement of Claim, and the pleadings in the *Patel* case confirm, that she was not a plaintiff in that litigation. Based on this evidence, the Commission finds that the claimant has also satisfied this element of her claim.

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 Letter 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 Letter, *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 ^{5 U.S.C. §552(b)(6)} 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 suffered physical injuries on September 5, 1986 during an incident in which, as discussed above, several gunmen hijacked Pan Am Flight 73 in Karachi, Pakistan, as it sat on the airport tarmac shortly before takeoff. Claimant avers that, after she had escaped from the airplane via an emergency exit, an ambulance pulled up next to her and she attempted to step inside; however, the vehicle began to move before she had boarded, and, according to claimant, she “fell backward, rolled under the wheels and felt one of the back tires

crush [her] right ankle.” Claimant states that, although she was taken to a local hospital, she “refused treatment at that hospital because [she] didn’t want to be touched[,]” and because she “was extremely frightened and did not want to be treated there.” She further states that, after leaving the hospital, she went to a hotel, where she treated her ankle herself with “ice and elevation until [she] was able to return home to receive medical treatment.”

In support of her claim, claimant has provided, *inter alia*, medical records, including contemporaneous medical records; several photographs allegedly depicting significant bruising on claimant’s thighs immediately following the incident; an affidavit sworn by the claimant briefly describing her experience and authenticating the attached photographs; the “Visas” page from her expired passport, bearing entry and exit stamps from Pakistani immigration, dated August 26, 1986, and September 7, 1986, respectively; and a copy of a December 1986 article in *New Jersey Monthly* in which claimant provides a detailed account of her experience during the terrorist incident.

The contemporaneous medical records provided with this claim indicate that claimant received treatment and underwent an X-ray examination at Newton Memorial Hospital in Newton, New Jersey on September 9, 1986. According to the “Emergency Service Record,” claimant had suffered a “Chip fx. [to the] medial malleolus” and a “Severe Bruise [to the] lateral malleolus.” A note on the record indicates that claimant told them that “an ambulance ran over [her] foot while in the foreign country escaping while the plane is hijacked [sic][,]” and that the incident occurred at the airport in Karachi, Pakistan. A copy of the separate written report of the radiological exam confirms that claimant suffered a “chip fracture from the lower tip of the medial

malleolus” of her right ankle, and had “considerable soft tissue swelling about the ankle.” Claimant was fitted with a “short leg cast” and was advised to use crutches for three weeks. In addition, she was advised to elevate her right leg with three pillows and to return in one week. Additional medical records from the months following the incident indicate that claimant underwent additional x-ray examinations.

Based on the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that the claimant’s injuries meet the standard for physical injury set forth above. Accordingly, claimant ^{5 U.S.C. §552(b)(6)} is entitled to compensation as set forth below.

COMPENSATION

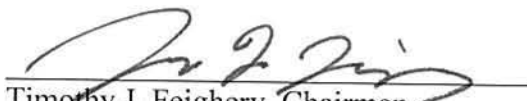
In the *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, the Commission held that \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission’s standard under Category E, and that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. Accordingly, the Commission determines that the claimant, ^{5 U.S.C. §552(b)(6)} is entitled herein to an award of \$3,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.


The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant ^{5 U.S.C. §552(b)(6)} is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

Dated at Washington, DC, October 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
NOV 30 2011**

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).