

**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)

Against the Republic of Iraq

}
}
}
}
}
}
}
}
}

Claim No. IRQ-I-013

Decision No. IRQ-I-019

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Kuwait and Iraq between August and December 1990. The United States Department of State has already provided him compensation for his experience as a hostage. He now seeks additional compensation based on a claim that his captivity led to a variety of mental and emotional injuries. Although we are sympathetic to all that Claimant endured as a result of his hostage experience, Claimant has not alleged any discrete act of sufficient brutality or cruelty causing his injuries. Thus, under terms of this program, he is not entitled to additional compensation beyond that which the State Department has already provided him. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that he was living with his family in Kuwait when Iraq attacked Kuwait in August 1990. He claims that Iraq effectively held him hostage for approximately four months, first for three weeks in the U.S. Embassy in Kuwait and for the rest of the time in the U.S. Embassy in Baghdad, where he was quartered in a small room in a nearby office building. Claimant's experiences and injuries are detailed in the Merits section below. Key to his claim is the assertion that, "as a consequence of his hostage-taking experience, he has suffered from severe and long-term psychological injuries, which have substantially interfered with his ability to enjoy life, which have rendered him 100% disabled from performing work, and which are above and beyond the baseline level of personal injuries suffered by the hostages in general."

Claimant sued Iraq in federal court for, among other things, hostage-taking and intentional infliction of emotional distress. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this

compensation “encompassed physical, mental, and emotional injuries generally associated with” being held hostage or subject to unlawful detention.¹ Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. For Claimant, this was \$800,000 total.

The State Department’s Legal Adviser subsequently requested that the Commission commence a claims program for some of the hostages that it had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who suffered a “serious personal injury,” when that injury was “knowingly inflicted ... by Iraq” and the severity of that injury is a “special circumstance warranting additional compensation.” The State Department made its request in a letter dated November 14, 2012 pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to “receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or 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”). The letter sets forth the category of claims as follows:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq¹ in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking² provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State³ for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, “serious personal injury” may include instances

¹ A group of hostages, not including Claimant, received compensation for economic loss. The hostages that received compensation for economic loss are not before the Commission in this program.

of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

¹ For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

² Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

³ The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”) at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. Commencement of Iraq Claims Adjudication Program, 78 Fed. Reg. 18,365 (Mar. 26, 2013).

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of compensation from the Department of State for his claim of hostage-taking, and the severity of his alleged personal injuries.

DISCUSSION

Jurisdiction

The 2012 Referral’s statement of the category of claims defines the Commission’s jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to

entertain only claims of individuals who (1) are U.S. nationals and (2) “already received compensation under the Claims Settlement Agreement from the Department of State¹ for [their] claim of hostage-taking,” where “such compensation did not include economic loss based on a judgment against Iraq[.]” 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

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 at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 5-6 (2014) (Proposed Decision). Claimant satisfies the nationality requirement. He has provided a copy of two U.S. passports—one from the time of the hostage-taking (valid from April 1990 to August 1992) and his current one (valid from January 2012 to January 2022)—as well as his Certificate of Naturalization from November 1988.

Compensation from the Department of State

The second requirement for jurisdiction under the 2012 Referral is that the claimant must have already received compensation under the Claims Settlement Agreement from the Department of State for his or her claim of hostage-taking, and that compensation must not have included economic loss based on a judgment against Iraq. In support of this aspect of his claim, Claimant has submitted a copy of a Release he signed on August 22, 2011, indicating that he would accept a given sum from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of State that he was paid this sum on

December 27, 2011. Claimant further stated under oath in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq. The Claimant has therefore satisfied this element of his claim.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

Merits

The 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of his or her claim. Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 7-8 (Proposed Decision). First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” In order to satisfy this standard, the injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. *Id.* at 7; Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 12 (Final Decision).

The second requirement is that Iraq must have “knowingly inflicted” the injury. Thus, even where a claimant suffered a serious personal injury that satisfies the other requirements in the 2012 Referral, it must be proven that Iraq knowingly inflicted the injury.²

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional

² “Iraq” is defined in footnote 1 of the Referral.

compensation.” In making this determination, the Commission will consider the nature and extent of the injury itself (including the specific acts committed by Iraq giving rise to such injury), the extent to which the injury substantially limits one or more of the claimant’s major life activities (both in the immediate aftermath of the injury and on a long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury. Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 8 (Proposed Decision).

Here, even assuming all the facts Claimant alleges to be true, Claimant has not proven that he suffered a “serious personal injury” within the meaning of the Referral. We thus need not address the question of whether Iraq “knowingly inflicted” such an injury on him or whether the severity of his injuries constitutes a “special circumstance warranting additional compensation.” A review of the facts Claimant alleges³ shows that, although he no doubt suffered tremendously, he cannot recover under this program because his injuries did not arise from “sexual assault, coercive interrogation, mock execution, or aggravated physical assault” or any other discrete act separate from the hostage experience itself that is comparable in brutality or cruelty.

³ In support of his claim, Claimant has provided, *inter alia*, two sworn statements (one dated November 17, 2010 and originally prepared for his federal court litigation, and a second one created specifically for this Commission dated June 17, 2013), in which he describes his hostage experience and his personal injuries; medical records, both recent and from the years following his hostage experience, describing the mental and emotional impairments resulting from his ordeal; a copy of the visa pages from Claimant’s expired U.S. passport; a 1992 letter from the Department of State confirming that he was a hostage between August 2, 1990, and December 9, 1990; an April 19, 1995 report from the mental health department of a naval hospital concluding that Claimant had, *inter alia*, “posttraumatic stress disorder” (“PTSD”); a copy of a 1997 disability decision from the U.S. Department of Veterans Affairs (“VA”) also concluding that he had PTSD resulting from Claimant’s “Persian Gulf War service”; a 2004 letter from the VA to a regional Social Security Administration office verifying Claimant’s PTSD resulting from the “Persian Gulf War”; a 2013 summary from the VA describing Claimant’s disability benefits; and recent income tax documentation. Although we make no findings on the specific facts Claimant alleges, we have no reason to doubt the broad outlines of his allegations. Indeed, by awarding Claimant compensation, the State Department has necessarily concluded that Iraq took him hostage or unlawfully detained him.

Kuwait City: Claimant was a military advisor to the U.S. Embassy in Kuwait City, living there with his wife and two daughters, when Iraq invaded Kuwait on August 2, 1990. Early that morning, he was awakened by distant sounds that he mistook for a thunderstorm, and sometime between 5:00 and 5:30 a.m. he was contacted by a U.S. Embassy official who informed him of Iraq's invasion of Kuwait and instructed him to report to the embassy to assist with security measures.

Two days later, on August 4, 1990, the dependents of U.S. officials were instructed to relocate to the embassy, and Claimant's wife and daughters arrived soon after. They remained inside the embassy for approximately three weeks. During this time, the number of people seeking shelter in the embassy grew to nearly 200; Claimant states that their "physical situation was extremely uncomfortable and tensions grew by the day." Moreover, gun battles between Iraqi and Kuwaiti forces erupted right outside the embassy compound, "such that [Claimant and the other hostages] were subjected to a daily barrage of gunfire." Claimant recalls his fear that "Iraqi forces would storm through the gates in which case we would all be killed or deployed as 'human shields' at some remote strategic location." He also describes how he "assumed [the task of] securing the medicines and other vital provisions that might be needed[.]" and on two such occasions, while searching for provisions outside the embassy compound, he "was caught in the middle of a cross-fire."

Travel from Kuwait to Baghdad: After three weeks inside the embassy, Iraqi authorities announced that all non-essential embassy personnel would be permitted to leave and would travel to the Jordanian border via Baghdad in a vehicle convoy. Thus, on August 23, 1990, Claimant, his family, and the other embassy personnel drove to

Baghdad from Kuwait City. Along the way, they “witnessed appalling scenes of devastation,” including burnt-out buildings and vehicles and “dead bodies along the roadside.”

Baghdad: After the convoy arrived in Baghdad, Claimant learned that the Iraqis “had reneged on their promise and that [they] might not be able to proceed to Jordan.” After negotiations between Iraqi and American officials, Claimant and the other hostages were informed that the women and children would be permitted to depart Iraq, but that the men would be required to stay in Baghdad. Claimant’s family subsequently left Baghdad via vehicle convoy for Turkey.

Claimant states that he was detained in Baghdad for approximately three and one-half months, “where [he] was quartered in a cramped 6-foot by 10-foot room located in an office building near the American Embassy.” He alleges that, during this time, he “lived in a state of constant stress and hyper-vigilance” “As in Kuwait . . . it again fell on [him] to gather medication and other vital supplies[,]” and Claimant states that he “continued to face a heightened risk of being arrested by Iraqi security forces every time [he] ventured out into the streets.” He describes how “[o]n several occasions, [they] were informed that [their] release was imminent—only to have [their] hopes dashed when [they] learned that the Iraqis had again reneged on their promises.” Finally, after a four-month ordeal, Claimant learned that the remaining hostages would be freed, and on December 9, 1990, he boarded an evacuation flight and returned home to the United States.

Injuries Alleged: All of the injuries Claimant alleges are mental or emotional. He states that, following his hostage experience, he “shut down emotionally and found

[him]self feeling detached from [his] family and friends.” A few years later, in April 1995, he sought psychiatric treatment at a naval hospital, complaining of “poor memory, forgetfulness . . . job stress, sleep disturbance and dreams of events that took place in the Gulf, and emotional distance from family and close friends.” The report of his visit, which has been provided with this claim, indicates a diagnosis of PTSD.⁴ In September 1997, after Claimant had retired from the military, the Department of Veterans Affairs (“VA”) also concluded that he had PTSD, determining that it was “70% disabling.” In its decision, the VA noted Claimant’s reports of “intrusive thoughts,” “nightmares a couple times a week,” and “occasional flashback experiences.” Claimant reported feeling “estranged from other people,” having difficulty falling asleep, suffering from “rare irritable outbursts,” and experiencing difficulty concentrating. He also complained of being “unable to have loving feelings[,]” and the examiner noted that he “appear[ed] to be emotionally shut down”

Claimant states that, “[t]o this day, [he has] difficulty focusing, [is] easy to anger and struggle[s] with anxiety and insomnia.” He further states that, as a result of his mental and emotional condition, he has been “psychologically disabled from engaging in gainful employment since March 1, 1997.” In addition, he claims that the psychological consequences of his hostage experience put strain on his marriage, leading to his eventual divorce.

⁴ The naval hospital report notes that after Claimant returned to the United States following his time as a hostage, “he was again stationed by the Army in the Persian Gulf where he was repeatedly exposed to dead and decomposed bodies, danger from mine fields, and loss of friends to exploding mines.” The report does not indicate how much of Claimant’s PTSD was attributable to these experiences rather than his hostage ordeal between August and December 1990. The fact that Claimant was stationed in the Persian Gulf again after his time as a hostage does, however, raise potential questions about the causal connection between his hostage experience and his mental health problems. Because we conclude that his injuries do not satisfy the Referral’s standard for a “serious personal injury,” we need not address any of those questions, and we make no finding on the cause of Claimant’s mental health problems.

Analysis: Claimant argues that his injuries qualify as “serious personal injuries” and are severe enough to constitute a “special circumstance warranting additional compensation” through this program, beyond that already provided by the State Department. He has not, however, alleged facts sufficient to satisfy the legal standard to make out a “serious personal injury” under the Referral. Specifically, the evidence indicates that his alleged injuries arose solely from his captivity as a hostage, and not from any discrete or specific act or acts other than the hostage-taking. Nonetheless, Claimant argues that injuries that arose solely from the hostage experience itself can warrant compensation under the Referral as long as those injuries are “substantially more severe than those suffered by the large majority of others who were subjected to Iraq’s hostage-taking policy”

Commission precedent requires us to reject this argument. As noted above, the Commission has previously interpreted the phrase “serious personal injury” in the Referral to mean injuries arising from one of the Referral’s four enumerated acts or some other act, separate from the hostage experience itself, of a similar type or a similar level of brutality or cruelty. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014). Because Claimant alleges no such act here, his claim must be denied.

In sum, after carefully considering all of Claimant’s evidence, the Commission concludes that none of the injuries alleged by Claimant constitutes a “serious personal injury” within the meaning of the 2012 Referral. Although we sympathize with all that Claimant has experienced both during and since his captivity in Iraq and Kuwait, the facts he alleges do not satisfy the legal standard for compensation in this program.

Accordingly, this claim must be and is hereby denied.

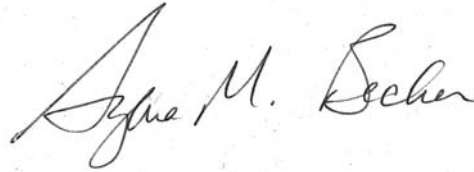
Dated at Washington, DC, July 10, 2014
and entered as the Proposed Decision
of the Commission.

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

August 19, 2014



Anuj C. Desai, Commissioner



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) (2013).