

**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

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Claim No. IRQ-I-015

Decision No. IRQ-I-017

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 she suffered while being held hostage in Kuwait between August and September 1990. The United States Department of State has already provided her compensation for her experience as a hostage. She now seeks additional compensation based on a claim that as a result of her captivity, she suffered various mental and emotional injuries, including depression, anxiety, insomnia, and post-traumatic stress disorder (“PTSD”). Although we are sympathetic to all that Claimant endured as a result of her hostage experience, Claimant has not alleged any discrete act of sufficient brutality or cruelty causing her injuries. Thus, under the terms of this program, she is not entitled to additional compensation beyond what which the State Department has already provided her. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that she was living in Kuwait when Iraq attacked Kuwait in August 1990. She claims that Iraq effectively held her hostage for approximately six weeks as she hid in her home, before being allowed to leave on September 14, 1990. Claimant's experiences and injuries are detailed in the Merits section below. Key to her claim is that throughout her ordeal she lived in constant fear that Iraqi authorities would storm her home and that, if so, she would be killed, raped, tortured, or forced to serve as a "human shield."

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 she 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 \$370,000 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, which the Commission received 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

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.

special circumstance warranting additional compensation. For the purposes of this referral, “serious personal injury” may include instances 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 her claim, including evidence of her U.S. nationality, her receipt of compensation from the Department of State for her claim of hostage-taking, and the severity of her 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. She has provided her U.S. birth certificate and a copy of two U.S. passports: one from the time of the incident (valid from February 18, 1988 to February 17, 1998) and her current one (valid from November 7, 2013 to November 6, 2023).

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 her claim, Claimant has submitted a copy of a Release she signed on August 22, 2011, indicating that she would accept a given sum from the Department of State in settlement of her claim against Iraq. She has also submitted a copy of an electronic notification from the Department of State that she was paid this sum on December 16, 2011. Claimant further stated under oath in her 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 her 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. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-007, at 7-8 (2014). 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.

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, the claimant must prove 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 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. *Id.* at 8.

Here, the facts Claimant alleges do not satisfy the requirement that Claimant have 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 her or whether the severity of her injuries constitutes a “special circumstance warranting additional compensation.”

A review of the facts Claimant alleges³ shows that although she no doubt suffered tremendously, she cannot recover under the Referral because her injuries did not arise from “sexual assault, coercive interrogation, mock execution, or aggravated physical

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

³ In support of her claim, Claimant has provided, *inter alia*, two sworn statements (one dated September 10, 2004 and originally prepared for her federal court litigation, and a second one created specifically for this Commission dated June 24, 2013), in which she describes her hostage experience and her alleged serious personal injuries; a newspaper article; and medical records, including letters from two doctors who have recently treated Claimant, a list of doctors who have treated the Claimant in the past, and a list of medications she has taken.

assault” or any other discrete act separate from the hostage experience itself that is comparable in brutality or cruelty.

Facts Alleged: Claimant was living with her husband in Kuwait City when Iraq invaded Kuwait on August 2, 1990. On that day, Claimant was awakened by a maid who informed her of the invasion. Claimant states she went into a state of shock and was very frightened. She did not calm down until later that morning when her husband came home from work. They went out to stock up on food and saw a dead Kuwaiti soldier hanging from the top of a crane, a horrific scene that Claimant states she will remember for the rest of her life. In the later part of that week, Claimant and her husband tried to escape via the Saudi border, but their vehicle got caught in the desert sand and they were forced to turn back. Claimant otherwise remained in hiding in her home for the entire time, dependent upon their neighbors and an employee to provide them with food and drinking water.

Claimant states that, throughout the time she was in hiding, she was in a state of severe emotional distress, consumed by feelings of despondency, hopelessness and despair. She lived in fear that Iraqi security forces would storm into her home and that she would be killed, raped, tortured or forced to serve as a “human shield.” Claimant states that, as a result of the stress and need to ration food, she lost approximately 25 pounds in six weeks.

In early September 1990, she was told that the Iraqis were permitting women and children to evacuate. The U.S. Embassy made arrangements for her departure and, on September 14, 1990, she said goodbye to her husband and flew from Kuwait to Baghdad, where, after several hours, she was able to fly to London. However, she spent the next

three months worrying about her husband's safety. The State Department told her in mid-October that her husband was still in hiding. Finally, on December 9, 1990 he was released.

Injuries Alleged: All of the injuries Claimant alleges are mental or emotional. She began therapy seven months after returning to the U.S., in April 1991, and remained in therapy for a year. While she had some improvement, she began having symptoms of depression, anxiety and insomnia again in 1993 when she moved with her husband to Saudi Arabia for two years and then to Dubai for another two years. The Claimant and her husband divorced in 1997. She states that she has continued to suffer these psychological problems to this day: she has been receiving psycho-therapy for much of the last 23 years and has been taking prescription medication to combat her depression, anxiety and insomnia.

Analysis: Claimant argues that her injuries qualify as "serious personal injuries" and are severe enough to constitute a "special circumstance warranting additional compensation" in this program. She has not, however, alleged facts sufficient to satisfy the legal standard to make out a "serious personal injury" under the Referral. Claimant contends that her injuries arose solely from her captivity as a hostage and not from any discrete or specific act or acts other than the hostage-taking. Thus, Claimant's legal theory is 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, her 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 her captivity in Kuwait, the facts she alleges do not satisfy the legal standard for compensation in this program.

Accordingly, this claim must be and is hereby denied.

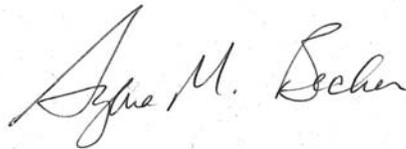
Dated at Washington, DC, July 10, 2014
and entered as the Proposed Decision
of the Commission.

**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 after 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).