

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
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ESTATE OF MANUEL GONZÁLEZ RUIZ, DECEASED;	}	Claim No. LIB-III-019
MINERVA GONZÁLEZ DELGADO, ADMINISTRATOR	}	
	}	Decision No. LIB-III-025
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	

Counsel for Claimant: Joshua M. Ambush, Esq.
Joshua M. Ambush, LLC

FINAL DECISION

Claimant Estate objects to the Commission's Proposed Decision denying its claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya"). In a previous claims program, the Commission awarded Claimant Estate \$3 million based on physical injuries suffered by Manuel González Ruiz during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In this claim, Claimant Estate seeks additional compensation, and in the Proposed Decision, the Commission denied the claim on the basis that Claimant Estate had not established that the severity of Mr. González Ruiz's injuries constituted a "special circumstance" warranting additional compensation, as required by the State Department's referral letter authorizing the Commission to hear

claims in this program.¹ On objection, Claimant Estate provides additional evidence and argument in support of its claim. After carefully considering Claimant Estate's new evidence and argument, we again conclude that Claimant Estate has not established that the severity of Mr. González Ruiz's injuries constitutes a special circumstance warranting additional compensation within the meaning of the 2013 Referral. We therefore affirm the denial of this claim.

BACKGROUND

Claimant Estate brought this claim against Libya based on the physical injuries Mr. González Ruiz suffered during the terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. Claimant Estate alleges that, in the attack, a bullet entered Mr. González Ruiz's left leg and fractured his tibia and fibula, requiring emergency surgery for removal of dead tissue and bone chips, and that his left leg was then placed in a cast. It also alleges that, while in the hospital in Israel, Mr. González Ruiz suffered two separate pulmonary embolisms, and his doctor was unable to repair his left leg injury or close the wound due to fear that it would cause another pulmonary embolism. Claimant Estate additionally alleges that, after a lengthy stay in the hospital, Mr. González Ruiz returned home to Puerto Rico, and that shortly after his return he suffered another pulmonary embolism that required further hospitalization. Finally, it alleges that Mr. González Ruiz suffered permanent injury to his leg and required orthotics to help him walk for the rest of his life. Mr. González Ruiz died in 1979 (seven years after the attack) at the age of 65 from an unrelated motor neuron disease.

¹ See Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission ("2013 Referral" or "November 2013 Referral").

In a previous program, the Commission awarded Claimant Estate \$3 million for Mr. González Ruiz's injuries. In this claim, Claimant Estate now seeks compensation above and beyond that \$3 million, based on a claim that the severity of Mr. González Ruiz's injuries is a special circumstance warranting additional compensation. In a Proposed Decision dated July 16, 2015, the Commission concluded that Claimant Estate had satisfied the requirements for jurisdiction, but denied the claim for additional compensation, finding that the severity of Mr. González Ruiz's injuries was not a special circumstance warranting additional compensation. *See* Claim No. LIB-III-019, Decision No. LIB-III-025 (2015) (Proposed Decision).

On August 3, 2015, Claimant Estate filed a timely notice of objection and requested an oral hearing. On November 2, 2015, Claimant Estate submitted a brief containing further argument in support of its objection and a video showing Mr. González Ruiz's daughter, Minerva González Delgado, answering questions about the attack and her father's injuries. The Commission held a hearing on November 19, 2015; the hearing consisted solely of argument by Claimant Estate's counsel, and the Claimant Estate presented no witnesses for examination. Approximately three weeks after the hearing, Claimant Estate submitted an affidavit of Dr. Mark A. Reischer offering his medical opinion about the cause and severity of Mr. González Ruiz's injuries.

DISCUSSION

To prevail in this claim, Claimant Estate has the burden to prove that the severity of Mr. González Ruiz's injuries is a "special circumstance" warranting additional compensation beyond the \$3 million already awarded to Claimant Estate.² Thus, to decide this claim, the Commission must determine whether Claimant Estate's evidence,

² 2013 Referral, ¶ 6.

which now includes a new video and Dr. Reischer's affidavit, suffices to meet that burden.

Claimant Estate makes numerous arguments. It draws on several pieces of evidence to establish the severity of Mr. González Ruiz's injuries: the video of Mr. González Ruiz's daughter and Dr. Reischer's affidavit submitted on objection; and the two medical records from Tel Hashomer hospital, a newspaper article, a photograph of Mr. González Ruiz, and the Special Commissioners' Report, all of which are described in detail in the Proposed Decision.³ It argues that the Tel Hashomer discharge summary shows that Mr. González Ruiz suffered an extremely severe, "life threatening" injury to his leg that led to multiple pulmonary embolisms (during his hospitalization and later at home), and that Ms. González Delgado's video, Dr. Reischer's affidavit, the newspaper article, and the photograph provide corroborating evidence of those injuries.

Claimant Estate also argues Mr. González Ruiz's injuries were permanent because his left leg was shorter than his right leg after it healed; and that Ms. González Delgado's video and the Special Commissioners' Report provide further support that these injuries were permanent. Finally, Claimant Estate also argues that Mr. González Ruiz's injuries affected his ability to perform certain activities: his left leg was in a cast for 10 months, during which he was wheelchair bound at times; he required special orthotic shoes for the rest of his life because his left leg was shorter than his right leg; he found it hard to walk and could not walk for long periods of time; he would stay home and not travel; and he needed help getting dressed. Claimant Estate argues that the severity of Mr. González Ruiz's injuries was comparable to those suffered by three other victims who have

³ Proposed Decision, at 11-15.

received awards for additional compensation.⁴ We awarded two of those other victims \$1.5 million, and Claimant Estate requests that amount.

As we discussed in the Proposed Decision, we consider three factors in determining whether the severity of a victim’s physical injuries is a “special circumstance warranting additional compensation” under Category D of the 2013 Referral: “[(1)] the nature and extent of the injury itself, [(2)] the impact that the injury has had on a [victim’s] ability to perform major life functions and activities—both on a temporary and on a permanent basis—and [(3)] the degree to which the claimant’s injury has disfigured his or her outward appearance.” Proposed Decision, at 7 (*quoting* Claim No. LIB-III-021, Decision No. LIB-III-016, at 7 (Proposed Decision)).

We further noted in the Proposed Decision that we address these three factors in light of the unique context of the Commission’s Libyan claims programs, under which every successful physical-injury claimant received an initial award of \$3 million. While no amount of money can adequately compensate some victims for their injuries, we recognize that \$3 million is “exceptionally high when compared to other claims programs” *See* Claim No. LIB-II-110, Decision No. LIB-II-111, at 5 (2011). For that reason, we have emphasized that “the eligible claimants in [the Libya claims] program [had], for the most part, been adequately compensated” *Id.* at 6. Starting from that premise, we have held that only the most severe injuries would constitute a special circumstance warranting additional compensation under Category D. After carefully considering Claimant Estate’s evidence and argument in light of this applicable standard, we again

⁴ *See* Claim No. LIB-II-159, Decision No. LIB-II-167 (2013); Claim No. LIB-II-168, Decision No. LIB-II-110 (2012); Claim No. LIB-III-033, Decision No. LIB-III-020 (2015).

conclude that, even with the new evidence, Claimant Estate has failed to carry its burden of proving its claim.

I. Proposed Decision

In its Proposed Decision, the Commission concluded that the nature and extent of the initial injuries Mr. González Ruiz suffered in the attack were not sufficiently severe to warrant additional compensation beyond the \$3 million already awarded. We noted that Claimant Estate's evidence showed that Mr. González Ruiz was hospitalized in Israel for somewhere between fifteen days and a month and that Claimant Estate had failed to provide any medical documentation to substantiate that he suffered a pulmonary embolism after his return to Puerto Rico. Proposed Decision at 12. The Commission further noted that even if it were to assume all of Claimant Estate's assertions about Mr. González Ruiz's initial injuries, those injuries still would not be among the most severe in these Libyan claims programs. *Id.* at 12-13.

The Commission also held that Claimant Estate had not demonstrated that the impact that Mr. González Ruiz's injuries had on his ability to perform major life functions and activities was particularly severe. We noted Claimant Estate's allegation that Mr. González Ruiz walked with a painful limp and that the only way he could walk normally was with a special orthotic shoe. The Commission observed, however, that Claimant Estate's evidence—a newspaper article and affidavits from Mr. González Ruiz's family members—contained nothing about any effect on Mr. González Ruiz's subsequent ability to perform major life functions or activities. Proposed Decision at 13. Indeed, other than one medical record from the Tel Hashomer orthopedic department, which stated that after his initial injury Mr. González Ruiz was “now in good condition and can be taken back to [the] U.S.A.,” Claimant Estate provided no medical records at all. The

Commission further stated that, even assuming Claimant Estate's evidence was sufficient to substantiate the permanent injuries Mr. González Ruiz allegedly suffered, he still would not have experienced a significant enough impact on his ability to perform major life functions or activities to warrant additional compensation in this program. *Id.* at 14-15.

Finally, the Commission noted that Claimant Estate did not contend that Mr. González Ruiz was significantly disfigured by the attack. Indeed, we did not have any information showing that Mr. González Ruiz had any long-term disfigurement to his outward appearance, or, if he did, the degree of its severity, or whether, and to what degree, it had an impact on his life. *Id.* at 15.

II. Claimant's New Evidence

On objection, Claimant Estate provided a video, said to have been recorded on June 2, 2015, showing Mr. González Ruiz's daughter, Minerva González Delgado, answering questions about her father's injuries. In the video, Ms. González Delgado appears with two individuals, Carlos González Alonso, Esq., and Enid Rodríguez-Benet, Esq., both of whom identify themselves as attorneys in Puerto Rico. Ms. González Delgado is first administered an oath by Ms. Rodríguez-Benet. Mr. González Alonso then proceeds to ask her a series of questions. The video runs between seventeen and eighteen minutes in length.

In the video, Ms. González Delgado answers various questions about Mr. González Ruiz's alleged injuries. She states that Mr. González Ruiz suffered two pulmonary embolisms in the hospital in Israel and was the last of the injured Lod Airport victims to return to Puerto Rico (on June 25, 1972) because he could not be moved due to concerns about the embolisms. She further states that he suffered a third embolism in the

hospital in Puerto Rico and had to take a blood thinner for the rest of his life. She states that, after the gunshot wound to her father's left leg had healed, his left leg was shorter than his right. When asked how much shorter, she gestures with her hands to illustrate. When the lawyer questioning her suggests that the difference in length was three inches, she tentatively appears to agree. She also states that her father had to thereafter use special shoes and that it hurt him to walk without the special shoes. She further notes that he needed help getting dressed, that he stayed at home, and that his wife cared for him. Ms. González Delgado also states that her father was extremely "affected emotionally" by the attack. She is unclear on the degree to which some of the effects on his life activities, such as his staying at home, were due to any alleged physical limitations rather than his emotional state. Finally, Ms. González Delgado also states that her father had scarring to his leg, but that he did not have scarring anywhere else on his body.

On December 7, 2015, approximately three weeks after the objection hearing, Claimant Estate submitted an affidavit (dated December 4, 2015) of Dr. Mark A. Reischer, a board-certified physician in physical and rehabilitation medicine and internal medicine. According to the affidavit, Claimant's counsel requested that Dr. Reischer provide an "opinion on the extent of the injuries that a Mr. Manuel Gonzalez Ruiz suffered during a terrorist attack on May 30, 1972 and subsequent hospitalization at the Tel Hashomer hospital for those injuries." The exhibits to Dr. Reischer's affidavit include his *curriculum vitae* and documents originally submitted by Claimant Estate with its Statement of Claim, including Mr. González Ruiz's death certificate; the Tel Hashomer medical report and disease summation; an undated photograph of Mr. González Ruiz in a wheelchair wearing a cast on his leg; and a copy of Claimant Estate's prehearing brief. Dr. Reischer's opinion is based solely on the Tel Hashomer records and

the photograph; he notes he was unable to examine Mr. González Ruiz, who died in 1979.

Dr. Reischer opines that Mr. González Ruiz’s injuries were “very serious and life threatening.” In particular, he states that “the pulmonary emboli were caused by blood clots that initially formed as a result of the gunshot wounds to Mr. González Ruiz’s left leg”; this injury was life threatening, he claimed, because it predisposed Mr. González Ruiz to potentially fatal pulmonary emboli. Dr. Reischer emphasizes that Mr. González Ruiz’s injuries were severe because his second pulmonary embolism occurred even while he was on intravenous anticoagulants. Dr. Reischer also states that the fact that doctors at Tel Hashomer could not repair Mr. González Ruiz’s leg fracture with metal rods and plates indicates that it was an “especially bad gunshot wound” and that the fact that Mr. González Ruiz’s medical team considered performing (but did not perform) a very risky surgery—ligation of the inferior vena cava⁵—indicates Mr. González Ruiz’s life was in danger. Dr. Reischer also notes that Mr. González Ruiz received oxygen by mask, which indicates that he was experiencing serious breathing issues, such as shortness of breath and decreased blood gas levels, and that carbon dioxide levels may have been adversely altered as well.

III. Analysis

On objection, Claimant Estate argues that the totality of the evidence now satisfies its burden of demonstrating that the severity of Mr. González Ruiz’s injuries constitutes a “special circumstance” warranting additional compensation. The essence of its argument is that Mr. González Ruiz’s alleged injuries—including the multiple

⁵ The inferior vena cava is the lower of the two large veins that carry deoxygenated blood from the body back to the heart. See e.g., *See Stedman’s Medical Dictionary* 2108 (28th ed. 2006); and https://en.wikipedia.org/wiki/Inferior_vena_cava (last visited March 23, 2016).

pulmonary embolisms he suffered, his mobility difficulties, and permanent disfigurement that rendered his left leg approximately three inches shorter than his right—are among the worst injuries in these Libyan claims programs. Claimant Estate thus contends that it is entitled to an additional \$1,500,000 in compensation.

Even with Claimant Estate’s new evidence, however, it has failed to establish that the severity of Mr. González Ruiz’s injuries constitutes a special circumstance warranting additional compensation within the meaning of the 2013 Referral.

Nature and Extent of Injury: For this factor, the thrust of Claimant Estate’s argument is that Mr. González Ruiz suffered a “life threatening” condition. The argument focuses on the two pulmonary embolisms Mr. González Ruiz suffered in Israel and the third he allegedly suffered in Puerto Rico after his return.⁶ Claimant Estate relies on the Tel Hashomer documents and Ms. González Delgado’s video testimony for support that Mr. González Ruiz did in fact suffer these pulmonary embolisms; and on the Tel Hashomer documents (including the length of hospitalization) and Dr. Reischer’s affidavit for the proposition that Mr. González Ruiz’s pulmonary embolisms did in fact rise to the level of a severe and life-threatening condition.

⁶ Claimant Estate also reiterates its argument that Mr. González Ruiz’s leg injuries were severe, noting that his leg was in a cast for some time and that he was even wheelchair-bound for part of that time. These leg injuries are simply not severe enough to warrant additional compensation beyond the \$3 million Claimant Estate has already received. *See, e.g.*, Claim No. LIB-II-148, Decision No. LIB-II-185 (2012) (denying claim for additional compensation where claimant had bullet wounds to his chest, buttocks and leg; had spent eight days in the hospital after the terrorist attack; had to fly back home while lying on his abdomen and then spent another four weeks in a hospital near his home; and had medical records showing continued pain in his lower leg, thigh and back for the first few years after the attack); Claim No. LIB-II-109, Decision No. LIB-II-112 (2011) (denying claim for additional compensation where claimant suffered bullet wounds to her right foot with entry and exit wounds, requiring immediate surgery and hospitalization for ten days); Claim No. LIB-II-110, Decision No. LIB-II-111 (2011) (denying claim for additional compensation where claimant suffered a through and through gunshot wound to the chest, which required four days of hospitalization and a course of antibiotics, and which left a 3-inch scar on his chest); Claim No. LIB-II-116, Decision No. LIB-II-166 (2012) (denying claim for additional compensation where the claimant had nerve damage to his right leg requiring him to wear a foot brace for 18 months to mitigate “foot drop,” had shrapnel remaining in both legs, and was assessed as having a partial permanent disability in both legs).

Claimant Estate has failed to establish that the pulmonary embolisms Mr. González Ruiz suffered were severe enough to warrant additional compensation above the \$3 million the Commission has already awarded the Claimant Estate. The medical records do support Claimant Estate's contention that Mr. González Ruiz suffered two pulmonary embolisms, the first one ten days after the attack and the second two days later.⁷ The evidence does not establish, however, that these embolisms were severe enough to warrant additional compensation.

Claimant Estate argues that the evidence shows that Mr. González Ruiz's pulmonary embolisms were extremely severe and life threatening. It argues first that Mr. González Ruiz remained at Tel Hashomer for about a month, much longer than most of the other Lod Airport victims and that this must be an indication of the severity of his initial injuries. Claimant Estate next points to Dr. Reischer's affidavit, which contends that Mr. González Ruiz's course of treatment, as indicated by the Tel Hashomer discharge summary, demonstrates that Mr. González Ruiz's pulmonary embolisms were life threatening, because: (1) Mr. González Ruiz's second pulmonary embolism occurred while he was on intravenous coagulants; (2) his doctors considered ligation of his inferior vena cava, a surgery Dr. Reischer claims doctors perform only if a patient appears to be at risk of dying; and (3) he was given oxygen by mask.⁸

⁷ Claimant's Estate alleges a third pulmonary embolism upon Mr. Gonzalez Ruiz's return to Puerto Rico, but offers no medical evidence to support this allegation. The only evidence of the alleged 1972 embolism is recent testimonial evidence (two short affidavits sworn in 2010 and 2014, and the 2015 video testimony) from relatives of Mr. González Ruiz who are beneficiaries of his estate. Since we view this evidence as deserving very little weight, *see, e.g.*, Claim No. LIB-III-025, Decision No. LIB-III-023 at 6-7 (2016), we find that Claimant Estate has not met its burden to establish that Mr. González Ruiz suffered a third pulmonary embolism.

⁸ Dr. Reischer's assessment is based on extremely limited information—two brief medical documents and one photograph. As he acknowledges, he was not able to examine Mr. González Ruiz, and he did not talk to any of the doctors who wrote the medical reports. His assessment also comes forty-three years after Mr. González Ruiz's initial injury in 1972. Furthermore, Claimant Estate did not submit Dr. Reischer's affidavit until *after* the objection hearing, and we have thus had no opportunity to ask Dr. Reischer

By itself, the fact that an injury is potentially life threatening is not enough to constitute a special circumstance warranting additional compensation in these Libyan claims programs. In determining how severe a Claimant's injuries are, we necessarily take some account of medical intervention. In the absence of medical treatment, many of the injuries suffered by victims in these Libyan claims programs could be characterized as life-threatening. Victims who were bleeding, for example, could, without proper medical attention, bleed to death.⁹ In many cases, medical intervention can attenuate the risks posed by potentially life-threatening injuries. Indeed, the Mayo Clinic's website, which Claimant Estate cites, states that "[p]ulmonary embolism can be life-threatening, but *prompt treatment can greatly reduce the risk of death.*"¹⁰

Here, the evidence suggests that Mr. González Ruiz received medical care that successfully managed the risk posed by his pulmonary embolisms: the contemporaneous medical record specifically notes that no operation was conducted to address his pulmonary embolisms because "his condition was improving." Furthermore, Mr. González Ruiz had already been in the hospital for ten days and was thus under medical care before his first embolism. However life threatening pulmonary embolisms may be, there is no medical evidence that Mr. Gonzalez Ruiz faced an eminent risk of death. At most, Dr. Reischer's affidavit supports the claim that, *without treatment*, Mr. González

questions. Given the severity of injuries alleged here, the tentativeness of some of Dr. Reischer's statements (for example, he occasionally uses the word "may" in describing his assessment), and the potential ambiguity of words such as "especially severe" and "life threatening," the fact that we did not have an opportunity to question Dr. Reischer directly or to probe the range of severity for pulmonary embolisms makes it difficult for us to draw firm conclusions from Dr. Reischer's affidavit.

⁹ See, e.g., Claim No. LIB-II-148, Decision No. LIB-II-185, *supra*.

¹⁰ See <http://www.mayoclinic.org/diseases-conditions/pulmonary-embolism/basics/definition/con-20022849> (emphasis added) (last visited February 29, 2016).

Ruiz's life would have been threatened. That is not enough to warrant compensation above the \$3 million the Claimant Estate has already been awarded.

Moreover, we have viewed the severity of an initial injury alone as sufficient to constitute a special circumstance in these Libyan claims programs in only two claims, and in both, the injury involved a direct injury to a vital organ.¹¹ Mr. González Ruiz was shot in the leg, and though the bullet led to a blood clot that in turn caused two pulmonary embolisms more than a week later, his initial injuries did not involve a direct injury to a vital organ.

Claimant Estate argues that the evidence shows that Mr. González Ruiz's pulmonary embolisms were on par with these two claims. For example, it argues that Mr. González Ruiz's injuries are similar to those suffered by the claimant in Claim No. LIB-II-159, Decision No. LIB-II-167. We disagree. The claimant in that claim fell fifteen feet from an airplane wing, directly onto her head on an airport tarmac during the mayhem following a terrorist hijacking. She provided substantial contemporaneous medical evidence that the fall on her head led to a "grand mal seizure," requiring her to be transferred to the intensive care unit and placed on a ventilator for 30 hours. Claim No. LIB-II-159, Decision No. LIB-II-167, at 3-4 (Final Decision). A contemporaneous CT scan revealed diffuse cerebral edema even after the administration of multiple drugs to reduce swelling. *Id.* at 6. She also experienced paralysis on one side of her body and the onset of difficult-to-control seizures. *Id.* at 6. The Commission further found that the claimant had suffered a traumatic brain injury which included hemorrhage in the basal ganglia on the right, post-traumatic gliosis in the right frontal lobe, and microstructural traumatic axonal injury at multiple locations. *Id.* at 5. The brain pathology resulting

¹¹ See Claim No. LIB-II-159, Decision No. LIB-II-167 (2013); Claim No. LIB-III-033, Decision No. LIB-III-020 (2015).

from the injury was diagnosed as permanent. *Id.* at 6. And we took particular note that the “injury is to her brain, a vital organ.” *Id.* at 10. Thus, while Claim No. LIB-II-159 involved a different type of injury not amenable to easy comparisons, we find it to be substantially more severe than the injuries to Mr. González Ruiz that the medical evidence establishes.

Similarly deficient is Claimant Estate’s argument that Mr. González Ruiz’s injuries are comparable to those in Claim No. LIB-III-033, Decision No. LIB-III-020. The victim in that claim, Elizabeth Root, was shot directly through one of her lungs, rather than, as here, in the bottom half of a leg. That direct hit to Ms. Root’s lung led to “a state of ‘circulatory collapse.’ Blood was filling her pleural cavity, and she required a blood transfusion and intubation. She required emergency surgery to repair her chest wound and reconstruct her thoracic bone.” Moreover, after the surgery, “her heart temporarily stopped, and she fell into a coma from which she did not awake until the following day. She had to be placed on a respirator for several days to prevent blood from filling her left lung, and she needed drainage tubes for nearly a full week.” The evidence established that “much of her [three-week] hospitalization was spent in intensive care.” Claim No. LIB-III-033, Decision No. LIB-III-020, Proposed Decision at 10. There is no medical evidence that Mr. González Ruiz’s injuries were comparable to those of someone who was in a coma after her heart stopped and spent long stretches in intensive care.

In short, Mr. González Ruiz’s injuries were not as severe as those suffered by the victims in Claim No. LIB-II-159, Decision No. LIB-II-167 and Claim No. LIB-III-033, Decision No. LIB-III-020, the only two claims in which a victim’s initial injuries alone warranted additional compensation in these Libyan claims programs.

Impact on Mr. González Ruiz's Major Life Functions and Activities: Claimant Estate contends that the impact Mr. González Ruiz's injuries had on his ability to perform major life functions and activities also supports its claim for additional compensation beyond the \$3 million already awarded. Claimant Estate's argument focuses on the effect of Mr. González Ruiz's leg injuries and is largely based on nonmedical evidence, particularly the newly submitted video of Mr. González Ruiz's daughter.

A claim for additional compensation in these Libyan claims programs must ordinarily be supported by medical evidence.¹² Because the only medical records supporting this claim came from Mr. González Ruiz's time in Israel in the immediate aftermath of the terrorist attack, and because those records contain nothing about any effect on his subsequent ability to perform major life functions or activities, we conclude that Claimant Estate has failed to meet its burden of showing that it warrants additional compensation.

Indeed, the medical record from the Tel Hashomer orthopedic department states that after his initial injury, Mr. González Ruiz was "now in good condition and can be taken back to [the] U.S.A." Proposed Decision at 13-14. While being in "good condition" does not necessarily mean Mr. González Ruiz had not suffered injuries that could have had a subsequent impact on his major life functions and activities, there is nothing in the medical record that indicates any specific injury that would have such an impact. *Id.* There is no medical evidence, for example, of Mr. González Ruiz's alleged leg-length disparity or his alleged need to use an orthotic. Furthermore, while it is possible that being shot in the leg and having pulmonary embolisms could affect one's ability to walk for some period of time, other factors, including the motor neuron disease

¹² See Claim No. LIB-III-014, Decision No. LIB-III-031 at 6 (2016).

which led to Mr. González Ruiz's death seven years after the attack, could have caused or contributed to any alleged longer-term impairment,. Proposed Decision at 14-16.

Moreover, even accepting Claimant Estate's factual allegations about the permanent injuries Mr. González Ruiz allegedly suffered, the alleged effect those injuries had on his ability to perform major life functions and activities—namely, some limitations on his mobility and the need to wear an orthotic—is not significant enough to warrant additional compensation beyond the \$3 million Claimant Estate has already been awarded. *See* Proposed Decision at 14-15, *citing* Claim No. LIB-II-116, Decision No. LIB-II-166, *supra* (denying claim for additional compensation where claimant had nerve damage to his right leg requiring him to wear a foot brace for eighteen months to mitigate “foot drop,” had shrapnel remaining in both legs, and was assessed as having a partial permanent disability in both legs).¹³

Finally, to the extent that Claimant Estate alleges that any of Mr. González Ruiz's major life functions or activities were affected by the psychological trauma he suffered, such impact is not compensable in these Libyan claims programs.¹⁴ His daughter's videotaped testimony intimates that it may well have been his emotional state, rather than lingering physical injuries, if any, that rendered him unable to do some of the things he allegedly could not do

¹³ We also reject Claimant Estate's argument that Mr. González Ruiz's injuries are comparable to the injuries in Claim No. LIB-II-168, Decision No. LIB-II-110. In that claim, we awarded \$500,000, based on a unique set of circumstances that is not generally useful to our analysis. That claimant sustained a lifelong impairment starting at the age of three, and he has ever since lived with the disfigurement, uncontrollable spasms, chronic impediment, and a 40% impairment to his left arm, which corresponded to a 24% impairment of the whole person, with demonstrable impact on his personal and professional development. *Id.* at 3-5.

¹⁴ *See* Claim No. LIB-II-128, Decision No. LIB-II-031 (2012). *See also* Claim No. LIB-II-088, Decision No. LIB-II-108, at 5 (2012).

Disfigurement: The third factor in our analysis —disfigurement— is also not a basis for an award here. Disfigurement has been an important factor supporting an award of compensation only when the disfigurement has been significant. Proposed Decision at 15. Here, there is no medical, or even photographic, evidence of either scarring or the leg-length disparity that Claimant Estate alleges. Claimant Estate argues that Ms. González Delgado’s video testimony provides evidence of both the scarring and the leg-length disparity. However, this testimony is of limited value,¹⁵ and, in any event, suggests very little disfigurement: Ms. González Delgado states in the video that her father did not have scarring to his face or body. Moreover, Claimant Estate has not otherwise provided any evidence that his alleged disfigurement had any significant impact on his life. The available evidence, when considered with the other evidence in the record, fails to establish that Mr. González Ruiz experienced disfigurement sufficiently severe to warrant additional compensation.

¹⁵ See *supra* note 7.

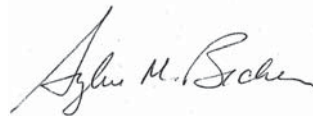
CONCLUSION

In sum, for the reasons discussed above and in the Proposed Decision, and in light of the severity of the injuries suffered by all the claimants in these Libyan claims programs, the Commission concludes that the severity of the injuries in this claim does not rise to the level of a special circumstance warranting additional compensation. While we sympathize with all that Mr. González Ruiz endured, the Claimant Estate is thus not entitled to additional compensation beyond the \$3 million the Commission has already awarded it. Accordingly, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, May 11, 2016
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

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Counsel for Claimant: Joshua M. Ambush, Esq.
Joshua M. Ambush, LLC

PROPOSED DECISION

Claimant Estate brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on physical injuries suffered by Manuel González Ruiz (the "victim") during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In that attack, a bullet entered Mr. González Ruiz's left leg and fractured his tibia and fibula, requiring emergency surgery. In a previous program, the Commission awarded Claimant Estate \$3 million in compensation for these injuries. Claimant Estate now seeks additional compensation based on a claim that the severity of the victim's injuries is a "special circumstance warranting additional compensation." Because Claimant Estate has failed to demonstrate that Mr. González Ruiz's injuries were sufficiently severe to warrant additional compensation beyond the \$3 million it has

already been awarded, Claimant Estate is not entitled to additional compensation in this program. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Mr. González Ruiz was in the terminal at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three armed terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. Claimant Estate states that, in that attack, a bullet entered Mr. González Ruiz's left leg and fractured his tibia and fibula, requiring emergency surgery for removal of dead tissue and bone chips, and that his left leg was then placed in a cast. The Claimant Estate also states that, while in the hospital in Israel, Mr. González Ruiz suffered two separate pulmonary embolisms, and his doctor was unable to further manipulate his left leg injury or close the wound due to fear that it would cause another pulmonary embolism. Claimant Estate additionally asserts that, after a lengthy stay in the hospital, Mr. González Ruiz returned home to Puerto Rico, and that shortly after his return he suffered another pulmonary embolism that required further hospitalization. Finally, Claimant Estate asserts that Mr. González Ruiz suffered permanent injury to his leg and required orthotics to help him walk for the rest of his life. Mr. González Ruiz died in 1979 (seven years after the attack) at the age of 65 from an unrelated motor neuron disease.

Although neither Claimant Estate nor Mr. González Ruiz was among them, a number of the Lod Airport victims sued Libya (and others) in federal court in 2006. *See Franqui v. Syrian Arab Republic*, No. 06-cv-734 (D.D.C.). In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims "aris[ing] from personal injury ... caused by ... [a] terrorist attack." *See Claims Settlement Agreement Between the United States of America*

and the Great Socialist People's Libyan Arab Jamahiriya Art. I (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Two months later, in October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission. *See* International Claims Settlement Act of 1949 (“ISCA”), 22 U.S.C. § 1623(a)(1)(C) (2012). The Secretary delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, and January 15, 2009, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

In 2010, Claimant Estate filed a claim under the January 2009 Referral, alleging that Mr. González Ruiz had suffered physical injuries as a result of the Lod Airport attack. By Proposed Decision entered June 3, 2011, the Commission determined that Mr. González Ruiz had in fact suffered physical injuries in that attack and awarded Claimant Estate a fixed sum of \$3 million under Category E of that Referral. *See* Claim No. LIB-II-078, Decision No. LIB-II-051 (2011). (“Physical-Injury Decision”). Because Claimant Estate did not file an objection to the Proposed Decision, the Proposed Decision automatically became the Commission’s Final Decision on July 14, 2011. *See* 45 C.F.R. § 509.5 (g) (2014).

The Legal Adviser referred an additional set of claims to the Commission on November 27, 2013. *Letter dated November 27, 2013, from the Honorable Mary E.*

McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, known as 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 our January 15, 2009 referral or by this referral, provided that (1) the claimant has received an award for physical injury pursuant to our January 15, 2009 referral or this 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 claimant did not make a claim or receive any compensation under Category D of our January 15, 2009 referral.

2013 Referral at ¶ 6.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of the third Libya Claims Program pursuant to the ICSCA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On July 28, 2014, the Commission received from Claimant Estate a Statement of Claim seeking compensation under Category D of the 2013 Referral. Claimant Estate supplemented its filing with further information and exhibits in a submission dated December 29, 2014. Claimant Estate’s submissions also incorporated by reference the evidence it had previously submitted in connection with the physical-injury claim it made under the January 2009 Referral.

DISCUSSION

Standing

The Claimant Estate has submitted a Resolution dated November 6, 1979, issued by the General Court of Justice of the Superior Court of Arecibo, Puerto Rico which

identifies Mr. González Ruiz's heirs as Minerva González Delgado, Carmen Nilda González Delgado, Maritza González Delgado and Elba Delgado Mora. *See also* Claim No. LIB-II-078, Decision No. LIB-II-051, *supra*, at 4. That same court also issued a Resolution on January 11, 2011 appointing Minerva González Delgado as the judicial administrator for Mr. Ruiz's estate. *Id.* Accordingly, the ESTATE OF MANUEL GONZÁLEZ RUIZ, DECEASED; MINERVA GONZÁLEZ DELGADO, ADMINISTRATOR is the proper claimant in this claim.

Jurisdiction

The Commission must next consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the "Category D" paragraph of the 2013 Referral is limited to claims of (1) "U.S. nationals"; who (2) have received an award for physical injury pursuant to the January 15, 2009 referral or this referral and (3) did not make a claim or receive any compensation under Category D of the January 15, 2009 referral. 2013 Referral ¶ 6.

Nationality

With respect to the first jurisdictional element, 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 continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014). In the case of claims brought by estates on behalf of beneficiaries, it is a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors (the War Claims Commission and the International Claims Commission) that, for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be

evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.¹

In its Decision on Claimant Estate's physical-injury claim under the January 2009 Referral, the Commission found that Mr. González Ruiz and the beneficiaries of his estate were all U.S. nationals and that the claim was thus held by a U.S. national at the time of the incident continuously through the effective date of the Claims Settlement Agreement. Physical-Injury Decision, *supra*, at 5-6. Claimant Estate therefore satisfies the nationality requirement here.²

Prior Award

To fall within the category of claims referred to the Commission, a claimant must have received an award under either the January 2009 or November 2013 Referrals. The Commission awarded Claimant Estate \$3 million based on Mr. González Ruiz's physical-injury claim under the January 2009 Referral. Claimant Estate has thus satisfied this element of its Category D claim.

No Claim Under Category D of the January 2009 Referral

With respect to the final jurisdictional requirement, Claimant Estate did not make a claim or receive any compensation under Category D of the January 2009 Referral. Therefore, Claimant Estate meets this element of its claim as well.

In summary, this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

¹ See, e.g., Claim No. Y-0660, Decision No. Y-1171 (1954); Claim No. W-9801, Decision No. W-2107 (1965); Claim No. G-2154, Decision No. G-1955 (1981); and Claim No. ALB-338, Decision No. ALB-321 (2008).

² One of the Claimant Estate's beneficiaries, the victim's wife Elba Delgado Mora, died on October 13, 2012, after the Commission's Physical-Injury Decision in 2011. However, since Ms. Delgado Mora was a living U.S. citizen from the date of Mr. Gonzalez Ruiz's death through the date of the Settlement Agreement, we need not inquire as to the nationality of her heirs. See, e.g., Claim No LIB-II-180, Decision No. LIB-II-079, at 5 (2011).

Merits

Standard for Special Circumstances Claims

The Commission has previously drawn on decisions from the January 2009 Referral to determine what constitutes a “special circumstance” in this program. The 2009 Referral decisions, made pursuant to the same Libyan Claims Settlement Agreement and involving the same terrorist attacks, addressed the exact same question as that presented here, whether the “severity of [a victim’s] injury” constitutes a “special circumstance warranting additional compensation.” The Commission adopted the same standard that it applied under the 2009 Referral and held that in determining whether the severity of a victim’s physical injuries is a “special circumstance warranting additional compensation” under Category D of the 2013 Referral, the Commission would consider three factors: “[(1)] the nature and extent of the injury itself, [(2)] the impact that the injury has had on a [victim’s] ability to perform major life functions and activities—both on a temporary and on a permanent basis—and [(3)] the degree to which the [victim’s] injury has disfigured his or her outward appearance.” Claim No. LIB-III-021, Decision No. LIB-III-016, at 7 (Proposed Decision).

Importantly, in all of its “additional compensation” decisions under the 2009 Referral (and its 2013 Referral “additional compensation” decisions to date), the Commission addressed these three factors in light of the unique context of the Commission’s Libyan claims programs, under which every successful physical-injury claimant received an initial award of \$3 million. While noting that no amount of money can adequately compensate some victims for their injuries, the Commission recognized that \$3 million is “exceptionally high when compared to other claims programs” See Claim No. LIB-II-110, Decision No. LIB-II-111, at 5 (2011). For that reason, the

Commission emphasized that “the eligible claimants in [the Libya claims] program [had], for the most part, been adequately compensated” *Id.* at 6. Starting from that premise, the Commission held that only the most severe injuries would constitute a special circumstance warranting additional compensation under Category D. As discussed in more detail below, Claimant Estate has not shown that Mr. González Ruiz’s injuries are among the most severe in this program, and Claimant Estate is thus not entitled to additional compensation beyond the \$3 million the Commission has already awarded it.

Factual Allegations

Claimant Estate states that Mr. González Ruiz was in the terminal at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three armed terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. Claimant Estate states that, in that attack, a bullet entered Mr. González Ruiz’s left leg and fractured his tibia and fibula, requiring emergency surgery for removal of dead tissue and bone chips, and that his left leg was then placed in a cast. Claimant Estate also states that, while in the hospital in Israel, Mr. González Ruiz suffered two separate pulmonary embolisms, and his doctor was unable to further “manipulate” his left leg injury or close the wound due to fear that it would cause another pulmonary embolism. Claimant Estate additionally asserts that, after a lengthy stay in the hospital, Mr. González Ruiz returned home to Puerto Rico, and that shortly after his return he suffered another pulmonary embolism that required further hospitalization. Finally, Claimant Estate asserts that Mr. González Ruiz suffered permanent injury to his leg and required an orthotic to help him walk for the rest of his life.

Supporting Evidence

Claimant Estate has submitted a number of documents in support of its claim. Two are medical records that appear to date back to the time of the attack. The first is an undated medical record consisting of typed notes from the orthopedic department of the Chaim Sheba Medical Center of the Tel-Hashomer hospital in Israel. This document recites, *inter alia*, that Mr. González Ruiz was diagnosed with an “open fracture tibia and fibula left pulmonary embolism”;³ that “[o]n admission [the hospital] found a gun shot wound in his left leg” and the “bullet wound was 3 x 2 cm, and the outlet 3 x 5 cm”; that an X-ray examination showed a “fracture of both tibia and fibula 15 cm above the ankle”; and that Mr. González Ruiz underwent an operation for “[e]xcision of wound, manipulation and plaster cast.” It further notes that, over the next few days, Mr. González Ruiz suffered two pulmonary embolisms. It additionally notes that no operation was conducted to address this situation as “his condition was improving.” It also states that the hospital decided “not to manipulate again because of the risk of recurrent pulmonary embolism” and that “[t]hrough a window in the cast [the doctors] tried to close the wound but a gap of less than 1 cm was left.” Finally, it states that Mr. González Ruiz “is now in good condition and can be taken back to U.S.A.”

The second is an undated disease summation form, also from the Tel Hashomer hospital, which notes as follows:

[o]n admission, we found a gunshot wound in [Mr. González Ruiz’s] left leg. The inlet wound was 3 x 2 cm and the outlet 3 x 5 cm. X-ray examination showed a commuted fracture of both tibia and fibula 15 cm above the ankle. On the same day . . . excision of necrotic tissues was

³ An “embolism” is “an [o]bstruction or occlusion of a vessel by an embolus” and “[i]n approximate common usage, any foreign substance that enters and is carried off in the vasculature by flowing blood. . . .” A pulmonary embolism is an embolism “of pulmonary arteries, most frequently by detached fragments of thrombus from a leg or pelvic vein, commonly when thrombosis has followed an operation or confinement to bed.” *See Stedman’s Medical Dictionary* 626-27 (28th ed. 2006).

done [and a] few small bone chips were removed. . . . We left the wound open and applicated P.O.P. cast.

The document also notes Mr. González Ruiz suffered a “[p]ulmonary embolism.”

Claimant Estate has additionally submitted an undated photo of Mr. González Ruiz with his leg in a cast and short affidavits of two family members (both of whom are beneficiaries of the Claimant Estate). The first affidavit states that during hospitalization Mr. González Ruiz suffered two separate pulmonary embolisms, and “[a]fter release from the Tel Hashomer/Haim Sheba Medical center, near the end of June 1972, [Mr. González Ruiz] suffered a third pulmonary embolism that required hospitalization.” The second affidavit states that Mr. González Ruiz “was gravely injured and required weeks of hospitalization”; and that he suffered two pulmonary embolisms in Israel and one in Puerto Rico requiring further hospitalization. It further states that “because of the way [Mr. González Ruiz’s leg] healed, his left leg was shorter than his right leg and he walked with a painful limp” and that “[t]he only way he could walk normally was with a special orthotic shoe. He wore such shoes until his death.”

Claimant Estate has also submitted an article from *The San Juan Star*, dated May 30, 1973, entitled “Tel Aviv – One Long Year Later.” The article depicts Mr. González Ruiz with his “right leg stretched out in front of him, resting on a footstool”; it reports that Mr. González Ruiz’s wife said he was brought home on a stretcher; and Mr. González Ruiz is quoted as saying, “I arrived home as a dead man. Like a cadaver.” The article also states that Mr. González Ruiz “spent 10 months with his leg in a cast,” and that “[a]lthough he can limp around the house now, he is ‘able to walk only with difficulty.’” The article further mentions that Mr. González Ruiz “used to own a gas station but now spends his days watching television, reading, or sitting on the family’s ample porch talking with friends.”

Finally, Claimant Estate has also submitted a 1974 decision of the Superior Court of Puerto Rico addressing the distribution of *ex-gratia* funds that Japan provided to the Commonwealth of Puerto Rico for the benefit of Puerto Ricans harmed by the Lod Airport attack. The Special Commissioners appointed by the court established a point system for distributing those funds and awarded Mr. González Ruiz 1,700 points out of a possible total of 2,000.⁴

Application of Special Circumstances Factors to Evidence

In making award determinations for additional compensation, we must take into account the severity of the injuries of all the victims who have sought additional compensation in these Libyan claims programs. See Claim No. LIB-II-110, Decision No. LIB-II-111, *supra*, at 5. Moreover, as noted above, “to the extent that a monetary award can ever adequately compensate for a physical injury,” the Commission views these claims for additional compensation through the lens of the \$3 million previously awarded to Claimant (and all successful claimants in this program) -- an amount that is “exceptionally high when compared to other programs.” *Id.* Seen through that lens, Claimant Estate’s evidence is insufficient to meet its burden to prove that the severity of Mr. González Ruiz’s physical injuries is a “special circumstance” warranting additional compensation in this claims program.

⁴ This court decision adds little to our understanding of the nature and extent of Mr. Gonzalez Ruiz’s injuries. Claimant Estate has not provided any evidence explaining how the Special Commissioners determined how many points to award specifically to Mr. Gonzalez Ruiz. Other Lod Airport victims in these Libyan claims programs have provided the related “Report From Special Commissioners,” a victim-specific document that provides details about how the Special Commissioners determined the point totals in individual cases, but Claimant Estate has not done so here. In any event, the Special Commissioners’ formula differs from the 2013 Referral’s mandate and the Commission’s standards for determining whether the severity of a claimant’s injuries warrants additional compensation in this program (as well as the 2009 Referral’s mandate and the Commission’s standard for physical-injury claims under the 2009 Referral). See Claim No. LIB-II-064, Decision No. LIB-II-073, 5-7 (2012) (discussing this same Report in the context of another Lod Airport victim); Claim No. LIB-II-088, Decision No. LIB-II-108, 4-6 (2012) (same). The 1974 Superior Court decision by itself is therefore of little help in adjudicating this claim.

Nature and Extent of Injury: First, the nature and extent of Mr. González Ruiz's initial injuries in the attack, in and of themselves, were not sufficiently severe to warrant additional compensation beyond the \$3 million already awarded. While we are sympathetic to all that he had to go through during the attack and its immediate aftermath, the nature and extent of Mr. González Ruiz's injuries were not among the most severe when compared with all the other claimants who have sought additional compensation in these Libyan claims programs. As an initial matter, when the medical evidence about a victim's injuries is sparse, as it is here, we have often looked to the length of hospitalization as one piece of relevant evidence about the severity of a victim's injuries.⁵ Here, the evidence is equivocal about the length of Mr. González Ruiz's stay in the hospital in Israel, although the typed notes from the Tel Hashomer Orthopedic Department do reference treatment five days after 9 June 1972, indicating that he was there at least fifteen days, and his wife referred in her affidavit to his having left Israel "near the end of June," which would mean he was there about a month. The Claimant Estate has also failed to provide any medical documentation from his time in Puerto Rico, and there are thus no medical records substantiating the assertion that Mr. González Ruiz suffered a pulmonary embolism in Puerto Rico.

More important than these evidentiary gaps is the fact that, even if the Commission were to assume all of Claimant Estate's assertions about Mr. González Ruiz's initial injuries, those injuries still would not be among the most severe in these Libyan claims programs: the Commission has previously denied additional compensation to other claimants whose physical injuries were similar to, or worse than, Mr. González Ruiz's. *See, e.g.*, Claim No. LIB-II-148, Decision No. LIB-II-185 (2012)

⁵ *See, e.g.*, Claim No. LIB-III-021, Decision No. LIB-III-016 (Proposed Decision) at 15-16; *cf.* Claim No. LIB-II-109, Decision No. LIB-II-112, at 6 (2011).

(denying claim for additional compensation where claimant had bullet wounds to his chest, buttocks and leg; had spent eight days in the hospital after the terrorist attack; had to fly back home while lying on his abdomen and then spent another four weeks in a hospital near his home; and had medical records showing continued pain in his lower leg, thigh and back for the first few years after the attack); Claim No. LIB-II-109, Decision No. LIB-II-112 (2011) (denying claim for additional compensation where claimant suffered bullet wounds to her right foot with entry and exit wounds, requiring immediate surgery and hospitalization for ten days); Claim No. LIB-II-110, Decision No. LIB-II-111, *supra* (denying claim for additional compensation where claimant suffered a through and through gunshot wound to the chest, which required four days of hospitalization and a course of antibiotics, and which left a 3-inch scar on his chest); Claim No. LIB-II-116, Decision No. LIB-II-166 (2012) (denying claim for additional compensation where the claimant had nerve damage to his right leg requiring him to wear a foot brace for 18 months to mitigate “foot drop,” had shrapnel remaining in both legs, and was assessed as having a partial permanent disability in both legs).

Impact on Claimant’s Major Life Functions and Activities: Claimant has also failed to show that the second factor—the impact of the injury on the victim’s ability to perform major life functions and activities—supports its claim for additional compensation. First, while Claimant Estate has provided a newspaper article and affidavits from the victim’s family members, it has not provided any medical records except those from his time in Israel in the immediate aftermath of the terrorist attack. Those records contain nothing about any effect on his subsequent ability to perform major life functions or activities, and the one relevant medical record from the Tel Hashomer orthopedic department, states that after his initial injury, he was “now in good

condition and can be taken back to U.S.A.” While, being in “good condition” does not necessarily mean he had not suffered injuries that could have a subsequent impact on his major life functions and activities, nothing in the medical record he has submitted indicates any *permanent* injury that could have such an impact.

Moreover, even accepting Claimant Estate’s factual claim about the permanent injuries Mr. González Ruiz allegedly suffered, the effect those injuries are alleged to have had on his ability to perform major life functions and activities is not significant enough to warrant additional compensation beyond the \$3 million it has already been awarded. Claimant Estate states that, as a result of Mr. González Ruiz’s 1972 injuries, he walked with a painful limp, and the only way he could walk normally was with a special orthotic shoe. Such an impairment does not rise to the level of the severe, life-changing impact on an individual’s personal life that we have previously deemed sufficient to warrant additional compensation in these Libyan claims programs. *See* Claim No. LIB-II-116, Decision No. LIB-II-166, *supra* (denying claim for additional compensation where claimant had nerve damage to his right leg requiring him to wear a foot brace for 18 months to mitigate “foot drop,” had shrapnel remaining in both legs, and was assessed as having a partial permanent disability in both legs).⁶ There is one small piece of evidence

⁶ *See also* Claim No. LIB-II-175, Decision No. LIB-II-139 (2012) (denying claim for additional compensation where the claimant had regular hip and knee pain that prevented her from participating in certain family activities, and a separated pelvis during pregnancy). Moreover, Claimant has not established a causal connection between the injuries he suffered in the attack and any subsequent long-term impairment. Although we can presume that being shot in the leg and having pulmonary embolisms would lead to at least some effect on one’s ability to walk for some period of time, there could have been other factors contributing to a longer-term impairment, including the motor neuron disease which led to his death. As the National Institute of Neurological Disorders and Stroke states, motor neuron diseases (MNDs) are a group of progressive neurological disorders that destroy motor neurons, the cells that control essential voluntary muscle activity, including walking. MNDs may cause muscles to weaken and waste away, the limb muscles to develop stiffness, movements to become slow and require effort, and over time, the ability to control voluntary movement can be lost. *See* National Institute of Neurological Disorders and Stroke, [Motor Neuron Diseases Fact Sheet, http://www.ninds.nih.gov/disorders/motor_neuron_diseases/detail_motor_neuron_diseases.htm](http://www.ninds.nih.gov/disorders/motor_neuron_diseases/detail_motor_neuron_diseases.htm) (last visited July 6, 2015). We are not saying that his motor neuron disease caused any impairment Mr. González Ruiz

indicating an impact on Mr. González Ruiz’s professional life, the claim that he “used to own a gas station but now spends his days watching television, reading, or sitting on the family’s ample porch talking with friends.” That vague statement in a newspaper article, however, fails to demonstrate the severe, life-changing impact on professional life that we have previously deemed sufficient to warrant additional compensation beyond the \$3 million the Claimant Estate has already been awarded in these Libyan claims programs. *See* Claim No. LIB-II-116, Decision No. LIB-II-166, *supra* (denying claim for additional compensation where claimant was assessed as having a partial permanent disability in both legs, and although unable to continue in his prior profession after his injuries, was eventually able to find work in a lower paying job).

Disfigurement: Finally, Claimant Estate does not contend that Mr. González Ruiz was significantly disfigured by the attack, the third factor. Moreover, disfigurement has been important to the outcome of our decisions only when it is significant. *See, e.g.*, Claim No. LIB-III-021, Decision No. LIB-III-016, *supra*, at 17 (finding severe disfigurement to claimant who lost both of her legs and has to wear prostheses); Claim No. LIB-II-116, Decision No. LIB-II-166, *supra*, at 5 (denying claim where disfigurement was not a prominent feature of claimant’s overall outward appearance). We have no information that Mr. González Ruiz had any long term disfigurement to his outward appearance, or, if he did, the degree of its severity, or whether, and to what degree, it had an impact on his life. In sum, the severity of Mr. González Ruiz’s injuries does not rise to the level of a special circumstance warranting additional compensation under Category D.

might have had, only that Claimant bears the burden to show that it was the terrorist attack that caused those impairments.

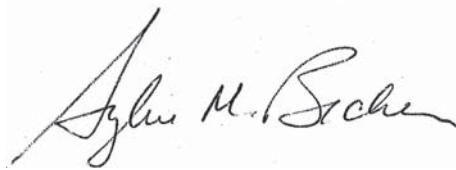
Conclusion

Having considered all of Claimant Estate's evidence in light of the severity of the injuries suffered by all the victims who have sought additional compensation in these Libyan claims programs, the Commission concludes that the severity of the injuries in this claim does not rise to the level of a special circumstance warranting additional compensation. While we sympathize with all that Mr. González Ruiz endured, the Claimant Estate is not entitled to additional compensation beyond the \$3 million the Commission has already awarded it. Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, July 16, 2015
and entered as the Proposed Decision
of the Commission.



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) (2014).