

**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 PEDRO HERNÁNDEZ RODRIGUEZ, DECEASED;	}	Claim No. LIB-III-024
MARÍA MAGDALENA GONZÁLEZ CORDERO, ADMINISTRATOR	}	Decision No. LIB-III-029
	}	
	}	
	}	
Against the Great Socialist People’s Libyan Arab Jamahiriya	}	
	}	

Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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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 the decedent, Pedro Hernández Rodriguez, during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972.<sup>1</sup> 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. Hernández’s injuries constituted a “special circumstance” warranting additional compensation, as required by the State Department’s referral letter authorizing the Commission to hear

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<sup>1</sup> Mr. Hernández died of unrelated causes in March 2007.

claims in this program.<sup>2</sup> On objection, Claimant Estate has not any submitted additional evidence, but does make further argument. Claimant Estate argues that the permanent injuries and disfigurement Mr. Hernández suffered are as severe as in other claims in which the Commission has awarded additional compensation, and that it should be awarded \$500,000. After carefully considering all of Claimant Estate's arguments and evidence, we again conclude that Claimant Estate has not established that the severity of Mr. Hernández'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 suffered by Mr. Hernández during the terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. It alleged that grenade shrapnel tore through the right side of Mr. Hernandez's body, resulting in prolonged hospitalization, years of extensive treatment, limitation of mobility, chronic nerve pain, several surgeries, and permanent impairment. In a previous program, the Commission awarded Claimant Estate \$3 million for Mr. Hernandez'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. Hernandez's injuries is a special circumstance warranting additional compensation. In a Proposed Decision dated September 17, 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 the decedent's physical injuries was not a special circumstance

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<sup>2</sup> 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").

warranting additional compensation. *See* Claim No. LIB-III-024, Decision No. LIB-III-029 (2015) (“Proposed Decision”).

In its decision, the Commission noted, among other things, that Mr. Hernández’s injuries were not among the most severe when compared with all the other claimants who had sought additional compensation in the Libyan claims programs. It noted in particular that Mr. Hernández had not undergone any major surgery either while hospitalized in Israel or after his return to Puerto Rico and that there was no evidence that the minor procedures to remove shrapnel in the years that followed were significant enough even to require hospitalization. Although Mr. Hernández had complained of chronic pain, “the nature of the [medical] procedures and other treatment [did] not suggest debilitating injuries.” Proposed Decision, *supra*, at 15.

In addition, the Commission found that, although Mr. Hernández was on crutches between 1973 and 1975, and was said to have suffered nerve pain in the years after the attack, he resumed working shortly thereafter, and there was no evidence he was ever unable to continue working on account of his injuries. The Commission also noted that Claimant Estate had not provided any disability determinations, and had not submitted “any medical records whatsoever from between 1978 and 2001 nor any relevant medical records from 2004 to 2007[.]” that could help us “determine the degree of Mr. Hernández’s impairment and mobility issues during this time.” *Id.* at 16. The more recent medical records indicated that a few pieces of shrapnel still remained in Mr. Hernández’s body (some of which were removed) and that he suffered from lingering pain, but “none of [the recent medical records] suggest[ed] that Mr. Hernández suffered from any form of incapacitating disability.” *Id.* Finally, although the Commission found

that Mr. Hernández had scars on the right side of his body, the medical records indicated that these were relatively small. Indeed, the most recent records did not mention any scars at all.

On September 25, 2015, Claimant filed a notice of objection and requested an oral hearing. On November 24, 2015, Claimant submitted a brief in support of its objection. Claimant did not, however, submit any further evidence. The Commission held an oral hearing on December 10, 2015; the hearing consisted solely of argument by Claimant's counsel. Claimant presented no witnesses for examination.

#### DISCUSSION

The Commission considers 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 claimant'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 6 (*quoting* Claim No. LIB-III-033, Decision No. LIB-III-020, at 6). As noted in the Proposed Decision, 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.

*I. Claimant’s Argument*

Claimant Estate’s objection is not based on a specific error of law or fact in the Proposed Decision; rather, it rests almost entirely on a comparison between the severity of Mr. Hernández’s injuries and the injuries of other “special circumstances” claimants in the Libya claims programs. In particular, Claimant Estate focuses on the claimant in Claim No. LIB-II-168, Decision No. LIB-II-110 (2012), whom the Commission awarded \$500,000 in additional compensation. As a three-year old, that claimant was shot in the left elbow, damaging his ulnar nerve; over the next quarter century, as he grew, the injury led to chronic damage—the permanent loss of motor capacity in his fingers resulting in a disability rating of 24% impairment to the whole person—along with a permanent disfigurement of his hand that was obvious to anyone who saw him.

In making its comparisons with LIB-II-168 and other claims, Claimant Estate addresses each of the three factors we use to determine whether the severity of a victim’s injuries warrants additional compensation. On the first factor, Claimant Estate argues that Mr. Hernández’s initial injuries were at least as severe as those in Claim No. LIB-II-168. Claimant Estate also argues that the Proposed Decision’s reliance on several claims in which claimants suffered more severe initial injuries than Mr. Hernández was mistaken, because the long-term impact of Mr. Hernández’s injuries is much greater than in those claims. Claimant Estate emphasizes that Mr. Hernández did in fact undergo *multiple*

surgeries to remove grenade shrapnel from all over his body, and that this evidences a significant initial injury.

As for the second factor—the impact on the victim’s ability to perform major life functions and activities—Claimant Estate argues that Mr. Hernández’s lengthy period of recovery (at least six years) and the chronic pain and immobility difficulties that he suffered during this time, favor an award. Moreover, the Estate notes that Mr. Hernández continued to suffer pain related to his shrapnel injuries in the final years of his life. Claimant Estate maintains that, despite the large gap in the medical records, it can be assumed Mr. Hernández continued to suffer chronic pain and disability during the twenty-three year period for which we have no medical records. Claimant Estate argues that Claim No. LIB-II-168 also involved a similar gap in the medical records. And Claimant Estate further notes that, although Mr. Hernández did find other work after the Lod airport attack, he “was unable to continue in his chosen career” because this job required him to stand most of the day.

On the final factor—disfigurement—Claimant Estate argues that “photographic evidence demonstrates the extensive scarring, discoloration, and swelling to Mr. Hernández’s right thigh, lower leg, foot, and ankle from the shrapnel embedded in him[,]” as well as the “deep scarring on [his] arm.” Claimant argues that the photographs show this scarring as it appeared after Mr. Hernández returned from Israel, and that these scars were located in “prominent places on the body that are impossible to hide . . . .”

## *II. Analysis*

After carefully considering Claimant Estate’s arguments in light of the applicable standard, we again conclude that Claimant Estate has failed to carry its burden of proving

its claim. In particular, based on the evidence before us, Claimant Estate has not shown that the overall severity of Mr. Hernández's injuries is comparable to that of those claimants whose injuries we have previously deemed sufficiently severe to warrant additional compensation.

Nature and Extent of Injury: The nature and extent of Mr. Hernández's injuries are not among the most severe in these Libyan claims programs. As the Proposed Decision noted, Mr. Hernández suffered grenade shrapnel wounds to the right side of his body, spent seven days in the hospital in Israel, and underwent several medical procedures to remove shrapnel in the years that followed. However, as the Commission explained, these injuries, by themselves, are not among the most severe when compared with all the other claimants who have sought additional compensation in these Libyan claims programs.

Claimant Estate's attempt to compare and distinguish other decisions in the Libyan claims program does not change this conclusion. Awards for additional compensation in these Libyan programs are based on an amalgam of the three factors: In every Category D claim, the Commission decides the claim based on the totality of the evidence presented. Claimant Estate argues that Mr. Hernández's initial injuries were more severe than those of the LIB-II-168 claimant, but even if true, it does not necessarily follow that an award is warranted in this claim. The award in Claim No. LIB-II-168 was based primarily on the other two factors: the permanent damage to that claimant's ulnar nerve resulting in chronic impairment and the obviously visible disfigurement that was the result of the initial injury – disfigurement the Commissioners saw firsthand during that claimant's oral hearing. While Claimant Estate is correct that

the mere fact that Mr. Hernández's initial injuries were not as severe as other unsuccessful claimants does not necessarily mean his claim should be denied, our prior decisions support the conclusion that Mr. Hernández's initial injuries were not among the most severe in these Libyan claims programs.<sup>3</sup> They certainly show, at the very least that his initial injuries do not, by themselves, support an award in this claim. *See, e.g., Claim of ESTATE OF ELIZABETH L. ROOT*, Claim No. LIB-III-033, Decision No. 020 (2015); Claim No. LIB-II-159, Decision No. LIB-II-167 (2013) (Final Decision).

Similarly deficient is Claimant Estate's argument that the Proposed Decision failed to give sufficient weight to the fact that Mr. Hernández underwent more than one surgery to remove grenade shrapnel from all over his body. As the Proposed Decision noted, the medical records do not indicate that Mr. Hernández ever underwent any significant surgeries, whether in Israel or after his return to Puerto Rico. Although Mr. Hernández underwent several procedures to remove shrapnel in the years that followed, the evidence suggests that these were minor outpatient procedures. And although Mr. Hernández complained of some pain during subsequent visits to the doctor, there is no evidence of any significant structural damage to any part of his body. Thus, for the reasons outlined in the Proposed Decision, this factor does not support an award of additional compensation in this claim.

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<sup>3</sup> *See* Proposed Decision, *supra*, at 15-16 (citing Claim No. LIB-II-148, Decision No. LIB-II-185 (2012) (denying claim for compensation above \$3 million 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 compensation above \$3 million where the claimant suffered bullet wounds to her right foot with entry and exit wounds, requiring ten days in the hospital and immediate surgery); Claim No. LIB-II-110, Decision No. LIB-II-111, *supra* (denying claim for compensation above \$3 million where the claimant suffered a through and through gunshot wound to the chest, requiring four days of hospitalization and a course of antibiotics, and which left a 3-inch scar on his chest)).



Impact on Claimant's Major Life Functions and Activities: The second factor similarly does not support an award of compensation beyond the \$3 million the Claimant Estate has already received. Claimant Estate asserts that from 1972 through 2001, Mr. Hernández suffered “extremely severe debilitation and disability” caused by “serious side effects” from his injuries that limited his mobility and caused him “debilitating, chronic pain.”

The Proposed Decision explained why this argument fails: Claimant Estate offers no evidence as to the degree of Mr. Hernández's impairment and mobility issues for most of those twenty-nine years. The medical records from between 1972 and 1978 do indicate that Mr. Hernández suffered some degree of pain and underwent a number of procedures to remove shrapnel. Mr. Hernández used crutches for approximately two years and was intermittently unable to drive or walk. However, we reject Claimant Estate's insistence that the Commission can assume these conditions persisted for twenty-three years beyond 1978, the last year for which we have relevant medical records. As with all physical injury claims in our Libya claims programs, including those for additional compensation, claimants “must verify their [physical] injuries with medical records . . . .” See *Claim of ESTATE OF JUAN CRUZ*, Claim No. LIB-III-015, Decision No. LIB-III-030, at 11 (2016) (Final Decision) (citing *Claim of ESTATE OF ANTONIA CRUZ*, Claim No. LIB-III-014, Decision No. LIB-III-031 (Final Decision), at 6 (2016)). With that in mind, the Commission cannot assume, as Claimant Estate encourages us to do, that Mr. Hernández suffered pain and disability between 1978 and 2001.

Moreover, for the limited time period for which we do have medical records, those records do not clearly establish that Mr. Hernández suffered temporary or

permanent impairment justifying an award in excess of \$3 million. Although the records indicate that Mr. Hernández was on crutches for two years, he was able to return to work after one year, and there is no evidence that he was ever unable to work after that. Although Dr. Murphy's 1975 letter refers vaguely to leg problems "to the point of disability," Claimant Estate has not submitted any formal disability rating. Claimant emphasizes that Mr. Hernández was unable to return to work as an x-ray technician, instead changing careers to medical supply sales; however, the evidence does not establish that this was entirely due to his physical limitations. Indeed, the medical records indicate that there may have been mental and emotional reasons for this career change, a fact that counsel acknowledged during the oral hearing. In any event, even if Mr. Hernández did have to change jobs because of his physical injuries, this alone would not form the basis for a successful Category D claim. As the Commission has previously stated, the reference to "major life functions" does not include a specific chosen career where the claimant has the capability to work in a variety of other fields. *See* Claim No. LIB-II-116, Decision No. LIB-II-166, at 5 (2012) (Final Decision).

Additionally, as noted above, although Mr. Hernández underwent several medical procedures to remove shrapnel in the years immediately following the incident, the available records do not contain evidence that these were anything but relatively minor outpatient procedures. Claimant Estate has not provided any record of hospitalization or any records of the surgeries themselves; all references to these procedures are found in various letters summarizing Mr. Hernández's treatment. And there is no record of any relevant surgeries after 1976. Furthermore, although the records from the 1970s contain evidence of nerve pain that would occasionally prevent Mr. Hernández from walking or

driving, the frequency of this pain is unclear, and the fact that Mr. Hernández was able to work during this time underscores this lack of clarity. Although pain is referenced in the more recent medical records covering 2001 to 2007, this pain appears to have been intermittent and far less severe than that of which Mr. Hernández complained in the 1970s. Counsel argued during the hearing that the need to remove the shrapnel in 2001 and 2002 was evidence of severe, chronic pain; however, this evidence is insufficient to show that Mr. Hernández suffered from a chronic, severe, or persistent degree of pain. Due to the passage of time, it is difficult to ascribe all of the symptoms in the 2001-2003 medical records to a 1972 injury, especially given that numerous other conditions, unrelated to the Lod Airport attack, are also referenced in these records.

In view of this paucity of evidence, we reject Claimant Estate's argument that the impact on Mr. Hernández's ability to perform major life functions and activities is comparable to that seen in Claim No. LIB-II-168, *supra*, in which the terrorist attack left that claimant with a hand disfigurement after a bullet wound to his left ulnar nerve, resulting in permanent impairment to his left hand that prevented him from moving his hand normally and left him permanently disfigured. Claimant argues that the two victims' injuries are similar enough to warrant compensation in this claim, and that, in fact, the claimant's impairment in Claim No. LIB-II-168 may not even have been as severe as Mr. Hernández's, since the LIB-II-168 claimant *could* use his hand, albeit with limitations. In addition, Claimant Estate notes that, like Mr. Hernández, that claimant had a gap in medical records (from 1987 to 2010). Under these circumstances, the Estate argues, it should be entitled to a similar award. We disagree. The evidentiary record in Claim No. LIB-II-168 was more extensive on the issue of the duration and the severity of the impact

on that claimant's ability to perform life functions and activities. For one, that claimant had submitted a formal disability rating: 40% for his left upper extremity, representing a 24% impairment of the whole body. *See* Claim No. LIB-II-168, Decision No. LIB-II-110, at 3-4 (2012) (Final Decision). Further, the evidence established that the LIB-II-168 claimant's condition limited his motor capacity and was chronic, evidenced in part by the disability determination. Moreover, the violent attack in that claim occurred when the claimant was a mere three years old—ensuring that the claimant would suffer from the disability throughout his life. By contrast, the evidence here shows that Mr. Hernández was already 35 years old by the time he was injured, had already been working and, with the exception of one year, continued to do so until his death and/or retirement. The Commission finds the lifelong impact on the Claim No. LIB-II-168 claimant's ability to perform major life functions and activities to be greater than that on Mr. Hernández.

Therefore, for the reasons discussed above and in the Proposed Decision, the Commission again concludes that the evidence of impairment of major life functions and activities in this claim is insufficient to support an award of additional compensation.

Disfigurement: Finally, we also reject Claimant Estate's argument that the third factor—disfigurement—supports an award, and for the same reasons discussed in greater detail in the Proposed Decision.<sup>4</sup> In Claim No. LIB-II-168 (which, again, is the principal claim with which Claimant Estate compares Mr. Hernández's injuries), “the most significant factor ... [was] the disfigurement of claimant's hand, demonstrated ... during the oral proceeding.”<sup>5</sup> That claimant had “suffered a significant disfigurement to his

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<sup>4</sup> *See* Proposed Decision, *supra*, at 17-18.

<sup>5</sup> Claim No. LIB-II-168, *supra*, at 5.

outward appearance.”<sup>6</sup> In particular, he was unable to bring two of his fingers together and this disfigurement was “impossible to hide from view in the course of ordinary activities.”<sup>7</sup>

The evidence fails to establish that Mr. Hernández’s disfigurement is as significant as was the LIB-II-168 claimant’s. Claimant Estate points to the photographic evidence submitted with the claim, documenting what it characterizes as “extensive” and “deep scarring” on Mr. Hernández’s leg and arm. In the Proposed Decision, the Commission noted that this scarring, based on the medical records, was said to be “smaller” and was not particularly disfiguring compared with other claims for which this factor was relevant in awarding additional compensation. *See* Proposed Decision, *supra*, at 17. Moreover, the Commission noted that none of the recent medical records referenced scarring at all, and the photographs appeared to have been taken shortly after the attack.

During the oral hearing, Claimant argued that the scars depicted in the photographs showed Mr. Hernández’s disfigurement as it appeared for years after the incident. As evidence of this, Claimant pointed to the 2011 authenticating affidavit of Ms. Rosa Maria Hernández Rios, Mr. Hernández’s daughter, in which she states that these “photographs were taken sometime after May 30, 1972, after [her] father’s return to Puerto Rico from Israel.” During the hearing, the Commission attempted to ascertain precisely when these photographs were taken. Although Claimant Estate’s counsel had no other evidence, she argued that, since the affidavit stated that these were how the scars appeared after the incident, this is how they appeared in their permanent form.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

This argument lacks merit. The affidavit states only that the photographs were taken “sometime after May 30, 1972, after [Mr. Hernández’s] return to Puerto Rico from Israel.” We believe “sometime after” means just that, at some unspecified time after May 30, 1972, not “some time after,” which could possibly be taken to mean, “after *a lengthy period* of time.”<sup>8</sup> Indeed, Ms. Hernández Rios specifically acknowledges that she “was not present when [the photographs] were taken” nor does she “know the exact date each photograph was taken.” This lack of evidence about the timing of the photographs is particularly significant as to the photograph of Mr. Hernández’s right arm, which appears to show a very recent injury that was still open and/or bleeding. To the extent Claimant Estate is suggesting that this is how the arm appeared years after the incident, the Commission rejects this as implausible and entirely unsupported by the evidence. In any event, the Commission again notes that, although Mr. Hernández did appear to suffer from minor scarring as a result of his shrapnel injuries, there is no evidence to suggest that this scarring was as extensive as in claims where the Commission awarded additional compensation on this basis. *See Proposed Decision, supra*, at 17 (citing, e.g., Claim No. LIB-II-174, Decision No. LIB-II-180 (2013) (Final Decision)).

#### CONCLUSION

Considering the totality of the evidence submitted, Claimant Estate has failed to meet its burden to show that the severity of the physical injuries Mr. Hernández suffered at Lod Airport in May 1972 is a special circumstance warranting compensation in addition to the \$3 million Claimant Estate has already received for Mr. Hernández’s

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<sup>8</sup> “Some” can mean either “of an unspecified amount” or “*of a fairly large or considerable* unspecified amount.” For example, in the sentence, “We talked for some time,” the word “some” means not just “of an unspecified amount,” but rather “of a fairly large or considerable unspecified amount.” *See Random House College Dictionary* 1252 (rev. ed. 1980).

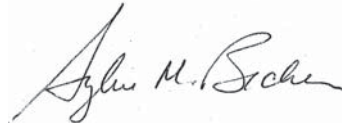
injuries. Accordingly, the denial of this claim set forth in the Proposed Decision must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, May 23, 2016  
and entered as the Final Decision  
of the Commission.

Handwritten signature of Anuj C. Desai in black ink, consisting of a stylized 'A' followed by 'Desai'.

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Anuj C. Desai, Commissioner

Handwritten signature of Sylvia M. Becker in black ink, consisting of a stylized 'S' followed by 'M. Becker'.

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Sylvia M. Becker, Commissioner

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
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Counsel for Claimant:	Joshua M. Ambush, Esq. Joshua M. Ambush, LLC
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PROPOSED DECISION

Claimant Estate brings this claim against the Great Socialist People’s Libyan Arab Jamahiriya (“Libya”) based on physical injuries suffered by Pedro Hernández Rodriguez during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In that attack, Mr. Hernández suffered shrapnel wounds to both legs and the right side of his body. Claimant Estate states that, as a result of these injuries, numerous pieces of shrapnel remained in Mr. Hernández’s body throughout his life, requiring numerous surgeries and resulting in chronic nerve pain and mobility difficulties. Under a previous program, the Commission awarded Claimant Estate \$3 million in compensation for these injuries. It now seeks additional compensation based on the claim that the severity of Mr. Hernández’s injuries is a “special circumstance warranting additional compensation.” Because Claimant Estate has failed to demonstrate that the injuries are sufficiently severe



to warrant additional compensation beyond the \$3 million it has already been awarded, it is not entitled to additional compensation in this program. Therefore, the claim is denied.

#### BACKGROUND AND BASIS OF CLAIM

Mr. Hernández was in the terminal at Lod Airport in Tel Aviv, Israel, on May 30, 1972, when three terrorists began shooting automatic rifles and throwing hand grenades at passengers gathered in the baggage claim area. Claimant Estate alleges that, when the attack began, Mr. Hernández dove to the floor. As he lay there, he looked up to see a grenade fly overhead; the grenade landed nearby and exploded, embedding shrapnel into Mr. Hernández's legs and the right side of his body. After the attack, Mr. Hernández was taken to a local hospital, where his wounds were cleaned and he underwent physiotherapy. He remained at the hospital for seven days; he was then discharged and returned home for further treatment. In the years that followed, Mr. Hernández visited several doctors complaining of lingering pain from his shrapnel wounds and difficulties with mobility, and he underwent numerous procedures to remove some of the remaining fragments. In March 2007, Mr. Hernández died of unrelated causes.

Although Mr. Hernández was not among them, a number of the Lod Airport victims sued Libya (and others) in federal court in 2006. Neither Mr. Hernández nor his estate, the Claimant in this case, ever joined that lawsuit. *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, the Claimant Estate filed a claim under the January 2009 Referral, alleging that Mr. Hernández had suffered physical injuries as a result of the Lod Airport attack. By Proposed Decision entered September 7, 2011, the Commission determined that Claimant Estate was eligible for compensation under Category E of that Referral and awarded it a fixed sum of \$3 million. *See* Claim No. LIB-II-115, Decision No. LIB-II-082 (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 October 12, 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 Estate 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 Estate 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 ICSEA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On May 13, 2014, the Commission received from Claimant Estate a completed Statement of Claim seeking compensation under Category D of the 2013 Referral, together with exhibits supporting the elements of its claim. Its submission 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

In its Physical-Injury Decision, the Commission noted that Ms. María Magdalena González Cordero (Mr. Hernández's widow) had, by resolution dated February 3, 2011, been appointed as the administrator of her late husband's estate. Therefore, the Commission held that the ESTATE OF PEDRO HERNÁNDEZ RODRIGUEZ, DECEASED; MARÍA MAGDALENA GONZÁLEZ CORDERO, ADMINISTRATOR,

was the proper Claimant Estate in that claim. As Ms. González Cordero has also submitted this claim as representative of the estate, that determination applies equally here.

#### 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*

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 its Physical-Injury Decision, the Commission found that the claim was held by a U.S. national from the time of the attack continuously through the effective date of the Claims Settlement Agreement. Physical-Injury Decision, *supra*, at 6. Claimant Estate therefore satisfies the nationality requirement here.

#### *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 the Claimant Estate \$3 million based on its decedent'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.

Merits

*Standard for Special Circumstances Claims*

To make out a substantive claim under Category D, a claimant must establish that the severity of his or her injury is a “special circumstance warranting additional compensation. 2013 Referral ¶ 6.<sup>1</sup> The Commission has previously held that, in making this determination, it would consider three factors: “[1] the nature and extent of the injury itself, [(2)] the impact that the injury has had on a claimant’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.” *Claim of ESTATE OF ELIZABETH ROOT*, Claim No. LIB-III-033, Decision No. LIB-III-020, at 6 (2015).

Importantly, in all of its “additional compensation” decisions under both the 2009 Referral and the 2013 Referral to date, the Commission has addressed these factors in light of the unique context of the Commission’s Libyan claims programs, under which

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<sup>1</sup> Strictly speaking, Category D provides *two* ways for a claimant to make out a substantive claim: the claimant must show that either (1) “the severity of the injury is a special circumstance warranting additional compensation”; or (2) “additional compensation is warranted because the injury resulted in the victim’s death.” See 2013 Referral ¶ 6. Since Mr. Hernández survived the Lod Airport attack and his subsequent death in 2007 was unrelated to the attack, only the first basis for entitlement is relevant here.

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 has 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 has 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 will constitute a special circumstance warranting additional compensation under Category D.” *Id.* As discussed in more detail below, Claimant Estate has not shown that Mr. Hernández’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. Hernández was inside Lod Airport preparing to take some photographs when the attack began. According to a newspaper account of the attack, Mr. Hernández “dove to the floor[,]” then saw a hand grenade fly over his head. He “frantically started to roll away when the grenade landed and exploded.” At that point, shrapnel became embedded “in [his] right side from his waist down to his foot.” Mr. Hernández later reported that machine gun bullets had also struck his right forearm and that most of the shrapnel wounds were on his right arm and leg. After the attack ended, Mr. Hernández was taken to Tel Hashomer Hospital for treatment, where he remained for approximately seven days.

Injuries Alleged: Claimant Estate asserts that, as a result of the Lod Airport attack, Mr. Hernández suffered numerous shrapnel wounds in both legs and along the

right side of his body. It states that doctors at Tel Hashomer Hospital treated Mr. Hernández's wounds and that he underwent intensive physiotherapy due to unspecified problems with his leg.

Claimant Estate asserts that, upon Mr. Hernández's return home to Puerto Rico, he "underwent years of extensive treatment for his injuries, including several operations in June and July 1972 to remove grenade shrapnel from his right leg, pelvis and hip." Yet the treatment was, according to the Claimant Estate, "unsuccessful" and Mr. Hernández "remained disabled from his injuries . . . and he continued to suffer numerous debilitating injuries[,] " including chronic pain and limited mobility. Claimant Estate also states that Mr. Hernández's "mobility was severely damaged[,] " and that four years after the attack, he "was still walking with difficulty." Further, Claimant Estate asserts that in response to high levels of humidity or temperature changes, Mr. Hernández experienced nerve pain in the right side of his body "so intense he could not drive or walk at all." It is alleged that at times this left him bedridden. Claimant Estate also asserts that, as late as four years after the incident, Mr. Hernández required "medical evaluation every four to six weeks for his injuries."

Although it does not allege any particular disability determination, Claimant Estate also alleges that Mr. Hernández's injuries prevented him from working. It alleges that he was forced to quit his job as an x-ray technician because he "could not stand all day as required[,] " although he did resume work in the medical field at a later date.

Claimant Estate states that medical records from the 1970s, and more recently from 2001 through 2003, indicate that shrapnel remained embedded in Mr. Hernández's body throughout his life, and that these shrapnel fragments continued to cause him chronic pain, requiring numerous surgeries and other medical treatment. As a result,

Claimant Estate alleges that Mr. Hernández “lost his mobility and years of his life to hospitalizations, surgeries, and medical treatment[,]” and that “[d]ebilitating chronic pain was his daily reality.”

*Supporting Evidence*

Claimant Estate has submitted, among other things, a contemporaneous newspaper article and photographs of Mr. Hernández from the time of the incident, including photographs of his physical injuries, and various medical records from the mid to late 1970s, as well as records from 2001 through 2003. These medical records include those from Mr. Hernández’s initial treatment in Israel, as well as a number of medical reports and letters describing Mr. Hernández’s treatment in Puerto Rico.<sup>2</sup>

The discharge summary from Tel Hashomer Hospital indicates that Mr. Hernández was admitted on May 30, 1972, having sustained “[m]ultiple shrapnel wounds . . . in both his legs and at his right flank.” Doctors performed “superficial cleaning,” administered antibiotics, and performed physiotherapy related to his leg wound. The summary includes a recommendation “for further physiotherapy in his country.” A letter dated September 26, 1976 (about four years after the attack) from the Puerto Rico Department of Social Services to the Israeli National Insurance Institute (“1976 Social

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<sup>2</sup> Claimant Estate has also provided 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 Claimant 1,100 points out of a possible total of 2,000. However, Claimant has not provided any evidence as to how the Special Commissioners made that determination. In particular, 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. 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). The 1974 Superior Court decision by itself is therefore of little help in adjudicating this claim.



Services letter”) confirms the injuries, noting that “[a]ll [Mr. Hernández’s] right leg was wounded by [the shrapnel] up to near the right kidney[,]” and that the “muscles around [his] right omoplate<sup>3</sup> and ribs were also penetrated by fragments although it [did] not appear the bones in that area were affected.”

The available medical records indicate that Mr. Hernández did undergo additional medical treatment in Puerto Rico. An August 30, 1976 letter from Dr. Raymond Báez Murphy indicates that Mr. Hernández was first seen on December 6, 1972, “with multiple wounds and pellets incrustated in his elbows and thighs.” This and other medical records from this time period indicate that Mr. Hernández underwent several procedures (referred to as “minor operations” in one letter from Puerto Rico Social Services) to remove some of this shrapnel, but as indicated in records as late as 1978, numerous shrapnel particles still remained in his body, particularly in his right leg, hip, elbow, knee, ankle, and the right side of pelvis, as well as his left leg.

According to the medical records, the shrapnel injuries caused Mr. Hernández chronic pain and other difficulties in the first few years after the attack. The 1976 Social Services letter indicates that, in early 1973, Mr. Hernández suffered unspecified “complications because the particles were causing bad blood circulation[,]” and he had to undergo another operation. The letter also notes that Mr. Hernández was unable to tolerate cool weather from November to February, or even “damp places[,] because he immediately feels an intense pain in several places of his body where grenade particles still are kept.” Dr. Murphy echoes this in his 1976 letter, noting that the remaining shrapnel particles “sometimes . . . bother [Mr. Hernández] whenever it’s hot or cold . . .

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<sup>3</sup> We presume “omoplate” is a reference to Mr. Hernández’s shoulder blade (scapula), since the Spanish word for shoulder blade is the nearly identical “omoplato” and the French word is in fact “omoplate,” the very word the Puerto Rican drafter of the letter used.

and at times he has to stay in bed.” He further notes that, as of August 1976, Mr. Hernández was being “seen every 4 or 6 weeks,” although he does not specify what, if any, treatment Mr. Hernández received during these visits. In an earlier, August 30, 1975, letter to the Israeli National Insurance Institute, Dr. Murphy also confirms that Mr. Hernández had undergone several operations to remove “lead fragments[,]” although he notes that this was “without any very positive results, due to the damage to the affected areas, making it impossible to improve his condition.”

Armando Saavedra, M.D., another doctor in Puerto Rico, notes in an October 1976 medical report that the shrapnel “particles produce a neuralgic<sup>[4]</sup> type of pain which incapacitates [Mr. Hernández] from driving, or even walking, especially during humid weather and temperature changes.” He also notes that, at some point, he surgically removed some of the shrapnel when it became infected, “which occur[ed] less frequently [as of 1976 than] immediately following the accident.” Dr. Saavedra makes similar comments regarding the nerve pain in a 1978 report, adding that “[o]ccasionally [Mr. Hernández’s] rt leg becomes swollen and hurts.”

As noted earlier, Claimant Estate has not presented any evidence of any disability determinations or related benefits; however, some of the medical records do make reference to mobility problems that resulted in professional difficulties. For instance, Dr. Murphy notes in a 1975 letter to the Israeli National Insurance Institute that Mr. Hernández suffered from “afflictions” on the right side of his body “to the point of disability . . . .” The 1976 Social Services letter notes that Mr. Hernández was in crutches from 1973 to 1975, and that, “[b]ecause of his inability to walk, he could not work . . . for about a year[,]” adding that he had to quit “because [the job] required standing most of

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<sup>4</sup> Neuralgia is “[p]ain of a severe, throbbing, or stabbing character in the course or distribution of a nerve.” *Stedman’s Medical Dictionary* 1307 (28th ed. 2006).

the day.” The letter adds, however, that “[l]ater on, he managed to work even [while] still in crutches.” As of the date of the letter (September 26, 1976), Mr. Hernández was employed as a “laboratory and surgical equipment seller.” None of the records submitted indicate that Mr. Hernández was unable to work between 1976 and the time of his death in 2007.

Some of the medical records also describe the scarring that the shrapnel injuries left behind. The 1976 Social Services letter indicates that Mr. Hernández had “a large scar on [his] right forearm[]” and “[m]ultiple smaller scars . . . in his right arm, right hip, foot and whole leg as well as many dark areas where grenade fragments are still imbedded.” It also indicates that, “[u]pon touching those dark spots, one can easily feel . . . said particles which sometimes protrude from the flesh.”

Claimant Estate has submitted several photographs of Mr. Hernández: some simply show him in a hospital bed or gurney; three of them, however, appear to depict a small gash on his right arm, numerous “pebble sized scars” on his right leg, and a smaller number of similar scars on his right foot. According to Mr. Hernández’s daughter, who authenticated the photographs, these three were all taken after Mr. Hernández returned from Israel in 1972, although she was unable to say exactly when. There are no photographs of the alleged scars from after this time, and no mention of them in the medical records after 1976.

Claimant Estate has not provided any medical records from the 23-year period between 1978 and 2001.<sup>5</sup> Indeed, the allegations speak very little to Mr. Hernández’s condition during this time frame. The relatively recent medical records are from

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<sup>5</sup> The medical records do include a note regarding a 1995 procedure; however, it appears to relate to a condition unconnected to Mr. Hernández’s shrapnel injuries, and Claimant Estate does not allege any connection.

Mayagüez Outpatient Clinic.<sup>6</sup> Starting in 2001, these records note that Mr. Hernández continued to suffer from some degree of pain resulting from his shrapnel injuries and that small pieces of shrapnel remained in his body. In July 2001, Mr. Hernández complained of dull pain in his right ankle when he moved; doctors removed from the ankle a “1.5 cm, smooth, hard, movable, ovoid foreign body . . . .” The following year, another foreign body—described as a “0.8 cm, hard, movable object”—was removed from the right foot after Mr. Hernández complained of “intermittent [sic] crampy pain in the area.” In December 2003, an examination of his right knee showed “no bone injury or bone destruction[,]” but did identify “countless metallic densities in the soft tissues of the thigh and calf.” However, there were “no other significant findings.” Claimant Estate has not provided any medical evidence related to Mr. Hernández’s Lod Airport injuries from 2004 until his death in 2007.

*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 claimants who have sought additional compensation in these Libyan claims programs. *See* Claim No. LIB-II-110, Decision No. LIB-II-111, at 5 (2011). Moreover, “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 Estate (and all successful claimants in these Libyan claims 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

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<sup>6</sup> The documents refer only to “Mayagüez”; however, Claimant Estate explains in its brief that this refers to the Mayagüez Outpatient Clinic, which it indicates is a satellite clinic of the Veterans Administration Hospital in San Juan, Puerto Rico.

severity of Mr. Hernández's physical injuries is a "special circumstance" warranting additional compensation.

Nature and Extent of Injury: The evidence is insufficient to show that the initial injuries Mr. Hernández suffered in the Lod Airport attack were among the most severe in this program. He certainly did suffer significant physical injuries in the attack, including shrapnel wounds to much of the right side of his body. Moreover, he spent approximately seven days in the hospital in Israel and made additional visits to the doctor in the months and years following his return to Puerto Rico, complaining of persistent pain requiring surgical procedures to remove some of the shrapnel pieces.

Even with this evidence, however, the available medical records do not suggest that Mr. Hernández's injuries were sufficiently severe to warrant additional compensation beyond the \$3 million the Claimant Estate has already received. For one, the discharge summary from Tel Hashomer Hospital makes no reference whatsoever to surgeries or any other major form of treatment, except to say that antibiotics were administered, "superficial cleaning" was performed, and Mr. Hernández underwent intensive physiotherapy. It recommended only that he undergo additional physiotherapy when he returned home.

Moreover, while Claimant Estate has presented various medical reports and doctors' letters from the years immediately following the incident, these records suggest only limited treatment consisting of apparently minor procedures to remove shrapnel—no hospitalization is mentioned—and make reference only to sporadic pain (albeit occasionally intense) in the affected parts of Mr. Hernández's body. Notably, apart from the embedded shrapnel, there is no suggestion of significant structural damage to any part

of Mr. Hernández's body. Thus, it would appear that he suffered no serious injury to his bones, muscles, and vital organs.

Moreover, although Mr. Hernández was said to have suffered from poor circulation and continued pain for which the shrapnel removal procedures offered only limited relief, the nature of the procedures and other treatment does not suggest debilitating injuries. No reference is made to any major surgery, prolonged hospitalization, or chronic impairment during this time—only relatively minor procedures to removal shrapnel (and no reference is made even to the physiotherapy recommended by the Israeli doctors).

In sum, the nature and extent of Mr. Hernández's initial injuries are not, by themselves, among the most severe when compared with all the other claimants who have sought additional compensation in these Libyan claims programs. The Commission has previously denied additional compensation (that is, compensation beyond the \$3 million initial awards) to other claimants whose physical injuries were similar to or worse than Claimant's. *See, e.g.*, Claim No. LIB-II-148, Decision No. LIB-II-185 (2012) (denying claim for compensation above \$3 million 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 compensation above \$3 million where the claimant suffered bullet wounds to her right foot with entry and exit wounds, requiring ten days in the hospital and immediate surgery); Claim No. LIB-II-110, Decision No. LIB-II-111, *supra* (denying claim for compensation above \$3 million where the claimant suffered a

through and through gunshot wound to the chest, requiring four days of hospitalization and a course of antibiotics, and which left a 3-inch scar on his chest).

Impact on Claimant's Major Life Functions and Activities: The second factor—the impact on Mr. Hernández's major life functions and activities—also supports a denial of this claim. Although Claimant Estate describes effects on Mr. Hernández's life, the degree to which his Lod Airport attack injuries impaired his major life functions and activities is not clear. As noted above, in the years following the attack, Mr. Hernández suffered nerve pain that occasionally prevented him from driving or walking. And according to the medical records, he was on crutches from 1973 to 1975, which reportedly prevented him from working for a year. However, the records state that he returned to work after that time, and there is no indication that he was ever unable to work due to his injuries after that. Although Dr. Murphy's 1975 letter indicates that Mr. Hernández suffered "afflictions" to the right side of his body "to the point of disability," no further details are provided. And as previously noted, Claimant Estate has not submitted any disability determinations that could assist the Commission in determining the extent of this alleged disability.

In addition, because Claimant Estate has not submitted any medical records whatsoever from between 1978 and 2001 nor any relevant medical records from 2004 to 2007—a total of 26 years—the Commission is unable to determine the degree of Mr. Hernández's impairment and mobility issues during this time. Although Claimant Estate has submitted medical records from 2001 to 2003, none of these suggest that Mr. Hernández suffered from any form of incapacitating disability. As with the records from the 1970s, they indicate that shrapnel remained in Mr. Hernández's body, that he experienced some pain in the affected areas, and that some of the fragments were

removed.<sup>7</sup> In the absence of additional evidence, however, the Commission must assume that Mr. Hernández was able to work after 1975, and that any lingering impact his injuries had on his mobility was limited.

In sum, based on the current record, the Claimant Estate has not established that Mr. Hernández's physical injuries had a significant enough impact on his major life functions and activities to warrant additional compensation in this program.

Disfigurement: The third factor—the degree of disfigurement—also supports our conclusion that the severity of Mr. Hernández's injuries is not a special circumstance warranting additional compensation. Disfigurement has been an important factor supporting an award of additional compensation only when the disfigurement has been significant. *See, e.g.*, Claim No. LIB-III-021, *supra*, at 17 (finding severe disfigurement to claimant who lost both of her legs and has to wear prostheses); Claim No. LIB-II-116, *supra*, at 5 (denying claim where disfigurement was not a prominent feature of claimant's overall outward appearance).

Although the evidence does indicate that Mr. Hernández had multiple scars on the right side of his body, these are mostly described as “smaller” scars, except for the scar on his right forearm, whose size is not specified, and the “dark areas” at the site of the remaining grenade fragments. Moreover, the photographic evidence does not suggest a particularly severe deformity and there is no indication that this condition was disfiguring to the extent observed in claims where the Commission has awarded additional compensation on the basis of disfigurement. *See, e.g.*, Claim No. LIB-II-174, Decision No. LIB-II-180 (2013) (Final Decision). Indeed, there is no mention of scarring in the

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<sup>7</sup> A February 2, 2003 note mentions a car accident; however, no date is provided and there is no indication of what, if any, injuries resulted from the accident, or whether Mr. Hernández's pain was related to the accident in any way.



more recent medical records at all, nor any photographic evidence except for the pictures of the injuries said to have been taken soon after the attack. For these reasons, Mr. Hernández's disfigurement does not provide support for an award of additional compensation.

#### CONCLUSION

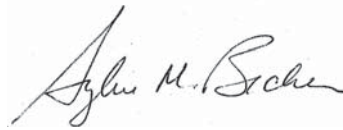
Having considered all of Claimant Estate's evidence in light of the severity of the injuries suffered by all the claimants who have sought additional compensation in these Libyan claims programs, the Commission concludes that the severity of Mr. Hernández's injuries does not rise to the level of a special circumstance warranting additional compensation. While we sympathize with all that Mr. Hernández endured, his 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, September 17, 2015  
and entered as the Proposed Decision  
of the Commission.



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Anuj C. Desai, Commissioner



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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).