

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

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-025
	}	
	}	Decision No. LIB-III-023
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

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

FINAL DECISION

Claimant objects to the Commission's Proposed Decision denying her claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya"). In a previous claims program, the Commission awarded her \$3 million based on physical injuries she suffered during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In this claim, she seeks additional compensation, and in the Proposed Decision, the Commission denied the claim on the basis that Claimant had not established that the severity of her 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 provides additional evidence and argument in support of her claim. She states that the evidence now

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").

demonstrates that she suffered permanent disfigurement and impairment, and that she should be awarded \$500,000. After carefully considering Claimant's new evidence and argument, we again conclude that Claimant has not established that the severity of her 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 brought this claim against Libya based on the physical injuries she suffered during the terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. She alleged that a shrapnel injury led to permanent scarring on her back and that a bullet wound rendered her unable to close the fingers of her left hand. In a previous program, the Commission awarded her \$3 million for her injuries. In this claim, she now seeks compensation above and beyond that \$3 million, based on a claim that the severity of her injuries is a special circumstance warranting additional compensation. In a Proposed Decision dated June 10, 2015, the Commission concluded that Claimant had satisfied the requirements for jurisdiction, but denied the claim for additional compensation, finding that the severity of Claimant's injuries was not a special circumstance warranting additional compensation. *See* Claim No. LIB-III-025, Decision No. LIB-III-023 (2015) (Proposed Decision).

On July 1, 2015, Claimant filed a timely notice of objection and requested an oral hearing. On October 29, 2015, Claimant submitted a brief containing further argument in support of her objection; "sworn videotaped testimony," in which Claimant describes the attack and her injuries; and two photographs of her lower back. The Commission held a hearing on November 19, 2015; the hearing consisted solely of argument by Claimant's counsel, and the Claimant presented no witnesses for examination.

DISCUSSION

To prevail in this claim, Claimant has the burden to prove that the severity of her injuries is a “special circumstance” warranting additional compensation beyond the \$3 million already awarded to her.² Thus, to decide this claim, the Commission must determine whether Claimant’s evidence, which now includes a new video and two new photographs of her lower back, suffices to meet that burden.

Claimant makes numerous arguments. She draws on several pieces of evidence to establish the severity of her injuries: the videotaped testimony and photographs she submitted on objection; and an affidavit from her niece, a lawyer’s “Questionnaire,” and the Special Commissioners’ Report, all of which are described in detail in the Proposed Decision.³ She argues that the video shows permanent disfigurement and impairment to her hand and fingers, and that her testimony and her niece’s affidavit provide corroborating evidence of those injuries. She also argues that the photographs show the severity of the shrapnel wounds on her back; and that her testimony, her niece’s affidavit, and the Questionnaire provide further support for her shrapnel injuries. The Special Commissioners’ Report, she argues, provides evidence that goes to the overall severity of all of her injuries. Finally, Claimant also argues that her injuries affected her ability to perform certain activities: She says she could no longer help her husband in his business; she could not drive; and she could no longer keep her house clean or “take care of her family” as she had before.

² 2013 Referral, ¶ 6.

³ Proposed Decision, at 8-11.

After carefully considering Claimant's evidence and argument in light of the applicable standard in this claim, we again conclude that, even with this new evidence, Claimant has failed to carry her burden of proving her claim.⁴

I. Proposed Decision

In its Proposed Decision, the Commission concluded that the nature and extent of the initial injuries Claimant suffered in the attack were not sufficiently severe to warrant additional compensation beyond the \$3 million already awarded. In addition, the Commission held that Claimant had not demonstrated that the impact the injuries have had on her ability to perform major life functions and activities has been particularly severe. We noted that Claimant stated that she is permanently disabled in the second, third, fourth, and fifth fingers of her left hand and, as a result, she cannot completely close that hand, and that she also contended that it takes her longer to perform daily activities such as dressing and tying her shoes. The Commission observed, however, that even assuming Claimant's evidence was sufficient to substantiate these problems, she had provided no evidence that her injuries had a life-changing impact on her personal or professional life.⁵ Indeed, other than the June 1972 hospital discharge summary, Claimant had provided no medical records at all, and we therefore had no medical

⁴ 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-021, Decision No. LIB-III-016, at 7 (Proposed Decision)).

⁵ Claimant also claimed to have suffered shrapnel wounds in other parts of her body, but the Commission noted that there was no *medical* evidence establishing those wounds. Moreover, although we assumed for purposes of our analysis that Claimant suffered some shrapnel wounds, she had not met her burden to prove the severity of these wounds.

documents that either discuss the recent condition of her hand or in any way connect her injury from the 1972 attack to her hand's alleged current condition.

The Proposed Decision further noted that Claimant is now 95 years old, and there could thus be numerous reasons why she cannot close her hand or may be slower at certain daily activities. We also indicated that, even if she had proven that her injuries from the terrorist attack made her slower at certain activities, that would not constitute a significant enough impact on a claimant's ability to perform major life functions or activities to warrant additional compensation in this program. Finally, the Commission stated that the limited nature of Claimant's disfigurement also supported the conclusion that the severity of Claimant's injuries is not a special circumstance warranting additional compensation.

II. Claimant's New Evidence

On objection, Claimant provided a video showing her answering questions about the attack and her injuries, said to have been recorded on June 3, 2015; two photographs; and a declaration of Enid Rodriguez-Benet., Esq., dated October 27, 2015. In the video, Claimant appears with two individuals: Carlos Gonzalez Alonso, Esq., and Ms. Rodriguez-Benet, both of whom identify themselves as attorneys and notaries public in Puerto Rico. Claimant is first administered an oath by Mr. Gonzalez Alonso, who then proceeds to ask her a series of questions about the attack and her injuries. All the questions and Claimant's responses are in Spanish. Claimant's answers and some of the questions are interpreted into English by Ms. Rodriguez-Benet throughout the video. The video runs approximately 24 minutes in length.

Claimant has also provided two photographs of what appear to be part of a person's body. Ms. Rodriguez-Benet states in her sworn declaration that she took the two

photographs in Claimant’s home on June 3, 2015 (the same day as the recording of the video); that both photographs depict Claimant’s lower back; and that Claimant represented to her that the injuries depicted in the photographs (*i.e.*, scarring, “circular looking bulges” and a “deep indentation” in the skin on Claimant’s lower back) were the result of shrapnel wounds Claimant suffered from the Lod Airport attack.

III. Analysis

On objection, Claimant argues that, although there is no further medical evidence available, the totality of the evidence now satisfies her burden of demonstrating that the severity of her injuries constitutes a “special circumstance” warranting additional compensation. The essence of Claimant’s argument is that her injuries—including permanent impairment of her hand and disfigurement of her third and her fourth fingers and lower back—are comparable to a prior claim in which the Commission, under a similarly worded referral, awarded \$500,000 in additional compensation for “disfigurement [to the claimant’s hand] in conjunction with the chronic nature and limiting effects of claimant's injury” Claim No. LIB-II-168, Decision No. LIB-II-110 (2012), at 5 (Final Decision). Claimant thus contends that she too is entitled to an additional \$500,000 in compensation.

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

The principal piece of new evidence, the video, provides very little support for her claim. First, the evidentiary value of the video is, at best, equivalent to that of a written declaration. Claimant’s “testimony” was effectively an out-of-court statement—*i.e.*, it was not live testimony given during the objection hearing on her claim. Moreover,

although made under oath, Claimant's statements in the video were not subject to cross-examination. Finally, there is no evidence that Ms. Rodriguez-Benet is certified to perform simultaneous interpretation, and it is not clear whether her interpretations were even verbatim, as would be expected in a court or other official government proceeding.⁶

Second, even as the equivalent of a written declaration, the video deserves very little weight as evidence. In determining how much weight to place on written declarations (or their equivalent), we consider certain factors. These may include, for example, the length of time between the incident and the statement, *see Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, ¶ 137 (Sept. 2, 1998), and whether the declarant is a party interested in the outcome of the proceedings or has a special relationship with the claimant, *see Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals* at 312, 317 (Cambridge University Press 2006) (1953) ("Cheng"). Sworn statements will carry much greater weight when there has been an opportunity for cross-examination. *See Akayesu*, Case No. ICT-96-4-T, ¶ 137; Cheng, at 314. The clarity and detail of the declarations should also be considered, as should the existence of corroborating declarations and other evidence. *See Partial Award: Prisoners of War—Eritrea's Claim 17*, 26 R.I.A.A. 23, 42 (Eri.-Eth. Cl. Comm'n 2003).

Here, these factors all suggest that the video has little value as evidence. For one, more than forty-three years have passed since Claimant's initial injury in 1972. Claimant is also of course a party interested in the outcome of the proceedings. Furthermore, there has been no opportunity for cross-examination. This is particularly important here, as

⁶ The asserted date that Claimant's videotaped testimony and photographs were created also raises questions. While Claimant (and Ms. Rodriguez-Benet) assert that both are from June 3, 2015, our Proposed Decision was not even issued until June 10, 2015, a week later. Although we understand that the date could be a mistake, if it is not, it seems odd that Claimant would produce new evidence before her claim had even been denied.

(1) there are no medical documents or disability ratings to give a measure of the alleged severity of any impairment; and (2) the Commission did not have an opportunity to question Claimant under oath as to other potential factors that may have contributed to her alleged impairment, such as her age. Finally, there is very little corroborating evidence, and for some key aspects of the claim there is no corroboration at all.

Additionally, there are a number of problems with the reliability of the video. First, as noted above, there is a potential question as to the reliability of the English interpretation of the testimony. In the video, one attorney questions Claimant in Spanish, Claimant answers in Spanish, and a second attorney then interprets, providing an oral translation to English, directly on the recording. Claimant has not provided any transcript of her testimony with a certified translation,⁷ nor has the interpreter provided any evidence that she has the expertise to interpret. Furthermore, the questions asked by the attorneys (occasionally the interpreting attorney asks questions as well) are in Spanish, and there is often no English interpretation of the questions. Moreover, there are instances when, because Claimant's answers are significantly longer than the English interpretation, it appears that Claimant's statements are not being fully translated. In addition, it is frequently hard to hear the answers because of other background noise, including phone calls, a dog barking, and a radio playing.

Even if we were to give the video much weight, it tends to undercut her claim, rather than support it. Most importantly, Claimant is gesturing with her left hand throughout the testimony, including making what appear to be tight fists, and tapping, at times almost pounding, on the table. The fact that Claimant appears perfectly capable of

⁷ After the objection hearing, Claimant's counsel offered to provide a certified transcript and translation of the videotaped testimony. Although Claimant subsequently decided not to provide the certified transcript and translation, it makes no difference: Claimant's testimony simply was not enough to overcome the other deficiencies in evidence in this claim.

making a tight fist with her hand significantly undermines her assertions that she “still cannot completely close [her] hand” and that she “has permanently lost the ability to grip with that hand.” The way in which she was able to move her hand in general appears inconsistent with her allegation that she “never regained full functioning of her left hand.” Indeed, at one point in the testimony, Claimant states she cannot close her left hand right after having just closed her left hand repeatedly. Moreover, the video shows a vibrant and, from all appearances, healthy-looking woman, and not one severely impaired in any major life functions and activities (particularly for a woman who is 95 years old).⁸ Consequently, Claimant’s new video evidence provides little to support her claim.

Claimant’s argument that the Special Commissioners’ Report provides enough evidence to support a claim for additional compensation in this program also lacks merit. Although the Report awarded her 200 points for being “permanently affected to a moderate degree,” Category D additional compensation is reserved for the most severely injured victims; if anything, this evidence further documents that Claimant was only injured to a “*moderate* degree.” As for the 300 points the Report gave her for “[p]rolonged intensive care hospitalization or subsequent operations,” this mere statement is insufficient to demonstrate the nature or extent of Claimant’s injuries, since she has not provided any medical evidence related to these alleged hospitalizations or operations.

Similarly deficient is Claimant’s contention that additional compensation is warranted by her disfigurement, including disfigurement of her left hand’s third and fourth fingers, as well as the scars and other disfigurements on her back. The Commission noted in the Proposed Decision that disfigurement has been important to the

⁸ Claimant acknowledges in her objection brief that she “demonstrates her robust energy despite her age” in her videotaped testimony.

outcome of its decisions only when it is significant. Proposed Decision at 14. However, Claimant's left hand did not look demonstrably disfigured in her post-hearing video submission. As for the scars and other disfigurements depicted in the photographs of Claimant's back, they simply do not rise to the level of disfigurement warranting additional compensation. Claimant also has not provided any evidence that the scarring of either her fingers or her back affected her life in any significant way.

Finally, Claimant argues that her injuries are comparable to those in Claim No. LIB-II-168, Decision No. LIB-II-110 (2012), where the claimant was awarded \$500,000. However, that decision dealt with a unique set of circumstances: that claimant sustained a lifelong impairment starting at the age of 3, and he has lived with the disfigurement, uncontrollable spasms, chronic impediment, and a 40% impairment to his left upper extremity, which corresponded to a 24% impairment of the whole person, ever since, with demonstrable impact on his personal and professional development. Claim No. LIB-II-168, Decision No. LIB-II-110, *supra*, at 3-5.

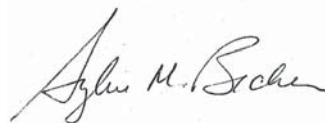
CONCLUSION

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 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 Claimant has endured, she is not entitled to additional compensation beyond the \$3 million the Commission has already awarded her. 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, March 11, 2016
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

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

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-025
	}	
	}	Decision No. LIB-III-023
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

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

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") based on physical injuries she suffered during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In that attack, a bullet fractured fingers of her left hand, and shrapnel lacerated her head, left shoulder, and right thigh. Claimant states that the shrapnel led to permanent scarring and that the bullet wound has rendered her permanently unable to close the fingers of her left hand. In a previous program, the Commission awarded Claimant \$3 million in compensation for these injuries. Claimant now seeks additional compensation based on a claim that the severity of her injuries is a "special circumstance warranting additional compensation." Because Claimant has failed to demonstrate that her injuries are sufficiently severe to warrant additional compensation beyond the \$3 million she has already been awarded, she is not entitled to additional compensation in this program. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant 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. She states that, in that attack, a bullet fractured the fingers of her left hand, and shrapnel lacerated her head, left shoulder, and right thigh. Claimant received medical treatment, including two days of hospitalization, outpatient rehabilitation care, and subsequent surgery to remove shrapnel. As a result of those injuries, Claimant states that her left hand is permanently disabled; that she cannot perform daily activities as quickly as she could before the attack; and that she has permanent scarring on her head, left shoulder, and right thigh.

Although Claimant was not 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 filed a claim under the January 2009 Referral, alleging that she had suffered physical injuries as a result of the Lod Airport attack. By Proposed Decision entered September 7, 2011, the Commission determined that Claimant was eligible for compensation under Category E of that Referral and awarded her a fixed sum of \$3 million for her physical injuries. *See* Claim No. LIB-II-114, Decision No. LIB-II-076 (2011). (“Physical-Injury Decision”). Because Claimant 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 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 ICSEA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On May 29, 2014, the Commission received from Claimant a Statement of Claim seeking compensation under Category D of the 2013 Referral. Claimant supplemented her filing with further information and exhibits in a submission dated August 6, 2014. Her submissions also incorporated by reference the evidence she had previously submitted in connection with the physical-injury claim she made under the January 2009 Referral.

DISCUSSION

Jurisdiction

The Commission must first 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 its Decision on Claimant's physical-injury claim under the January 2009 Referral, the Commission found that Claimant was 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 4. She 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 Claimant \$3 million based on her physical-injury claim under the January 2009 Referral. Claimant has thus satisfied this element of her Category D claim.

No Claim Under Category D of the January 2009 Referral

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

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 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 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 has not shown that her injuries are among the most severe in this program, and she is thus not entitled to additional compensation under

the November 2013 Referral beyond the \$3 million the Commission has already awarded her.

Factual Allegations

Claimant states she 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. She states that, in that attack, a bullet fractured the fingers of her left hand, and shrapnel lacerated her head, left shoulder, and right thigh. As a result of those injuries, Claimant received medical treatment, including the repositioning of her fourth finger with a “Kirschner nail”¹ and the “debendment”² of her third finger. She also states she was treated for shrapnel wounds to her head, left shoulder, and right thigh. She states that she was hospitalized for four days to take care of her immediate medical needs and then went to a nearby hotel and received outpatient care at the hospital’s rehabilitation center. According to Claimant, after her return to Puerto Rico, the pins in her hand were removed and she continued her rehabilitation therapy. Claimant also states that, a year after the attack, she required another surgery, this one to remove shrapnel lodged in her right buttock.³ Claimant also states that she is now permanently disabled in the second, third, fourth, and

¹Citing *Tabler’s Cyclopedic Medical Dictionary*, Claimant states that “Kirschner wire is ‘[s]teel wire placed through a long bone in order to apply traction to the bone’” and that nailing “involves ‘attach[ing] the ends of or pieces of broken bones.’” See also Wikipedia, Kirschner wire, http://en.wikipedia.org/wiki/Kirschner_wire (last visited May 21, 2015) (“Kirschner wires . . . are used to hold bone fragments together (pin fixation) or to provide an anchor for skeletal traction.”).

² Claimant has not defined “debendment,” and the Commission has been unable to find a medical definition for this term or, indeed, any use of it in any other context. This term is taken from the difficult-to-read handwritten Tel Hashomer discharge letter, discussed *infra*, and the fact that it may come from a non-native speaker of English combined with the fact that neither we nor Claimant has found any use of the term at all suggests that the term may not actually exist. The term in this context appears to mean the “unbending” or straightening of Claimant’s bent finger. Whatever it means, the language used in the discharge letter suggests it was probably a relatively minor procedure, since the letter states, “III finger – simple fracture of the baser. Only a debendment was done.”

³ It is unclear whether this is the same shrapnel as that purported to have lacerated her right *thigh*.

fifth fingers of her left hand and, as a result, cannot completely close her hand or perform daily activities, such as dressing and tying her shoes, as quickly as she could before the attack. Claimant further states that, as a result of the shrapnel wounds, she has permanent scarring on her head, left shoulder and right thigh.

Supporting Evidence

Claimant has supported her claim with, among other things, a discharge letter from the Haim Sheba Integrated Medical Center (part of the Tel Hashomer hospital) in Israel, dated June 1, 1972, two days after the attack.⁴ The discharge letter describes Claimant's "[g]eneral condition" as "good" and her injuries as including an open fracture to the third and fourth finger. The letter states that treatment included excision and suturing of wounds, splinting of the hand, "a debendment" of the third finger, and a repositioning of the fourth finger with a Kirschner nail. According to the letter, Claimant was discharged with a splint, a prescription for Penbritin,⁵ and one further follow-up appointment in the rehabilitation center of the hospital's outpatient clinic. The discharge letter makes no mention of Claimant's second or fifth fingers or of shrapnel anywhere in her body.

Claimant has also submitted a September 1, 1977 letter addressed to her from Jorge Ortiz Toro, Esq., a lawyer who appears to have represented at least some of the Lod Airport victims against Air France for injuries suffered in the attack. In his letter, Mr.

⁴ Although Claimant and other evidence repeatedly refers to Claimant having been hospitalized for four days, the discharge summary is the only contemporaneous documentation we have, and it indicates that she was discharged on June 1, 1972, two days after the May 30th terrorist attack. We thus conclude she was in the hospital for two days, not four. Even if she had been hospitalized for four days, however, that would not change our ultimate disposition of this Claim.

⁵ Penbritin, also known as Ampicillin, is an antibiotic that is used to treat certain types of bacterial infections. See *Stedman's Medical Dictionary* 66 (28th ed. 2006); and <http://www.nhs.uk/conditions/antibiotics-penicillins/pages/selectorshow.aspx?medicine=Penbritin> (last visited May 21, 2015).

Toro requests Claimant to write down the details of her hospitalization and treatment, including the “physical and mental hardship related to [her] injuries,” and to report to a “Dr. Llompert” for a medical examination. Included with the letter is a document entitled “Questionnaire” that contains a summary of harms Claimant allegedly suffered, which Mr. Toro apparently wanted Claimant to review in advance of the medical examination.⁶ The “Questionnaire” states, *inter alia*, “[s]urgical procedures and third and fourth fingers of left hand splinted. Routine treatment for wounds on head, shoulder and thigh” and “[h]ospitalized for four days with postoperative care of routine treatment.” The “Questionnaire” additionally states, “Outpatient Service . . . The patient was transferred to the Hotel in Tel Aviv and was seen once in the [Tel Hashomer] Hospital Rehabilitation Section,” and further notes that, back in Puerto Rico, Claimant “underwent surgery approximately one year after the event to remove metal fragment lodged in right buttock, which started to cause pain symptoms”; had a surgical procedure to remove her “orthopedic pins”; and “underwent physical therapy” The “Questionnaire” describes Claimant’s then “Current Status and Prognosis Related to the Incident” as follows: “The patient has superficial scars on head, left shoulder and right thigh. Her left hand is permanently impaired with respect to second, third, fourth and fifth fingers.”⁷

⁶ Mr. Toro’s letter states, “I attach a report of the examinations done by the Commonwealth doctors to refresh your memory regarding your medical histories and so you can provide a copy to Dr. Llompert when [you] go for your appointment.” It is unclear whether the “report” referenced in Mr. Toro’s letter is the same as the “Questionnaire.” We assume it is, since Claimant has not submitted any other document that could be the “report.”

⁷ The 1977 letter (together with the “Questionnaire”) is from a lawyer for what appears to be the purpose of a lawsuit, and it does not annex any medical records or contain a signed contemporaneous affirmation by the Claimant that the descriptions are accurate. Nor does the letter discuss any impact that the injuries had on Claimant’s ability to perform major life functions or activities. Additionally, the “Questionnaire” states that Claimant had been “[h]ospitalized for four days,” even though the Tel Hashomer discharge letter indicates that Claimant was discharged on June 1, 1972, two days after the terrorist attack. While the letter and “Questionnaire” are thus somewhat informative, we do not view them as particularly reliable.

Claimant has also submitted a “Report From Special Commissioners,” which appears to relate to a 1974 program administered by the Superior Court of Puerto Rico to distribute *ex-gratia* funds that Japan provided to the Commonwealth of Puerto Rico for the benefit of Puerto Ricans harmed by the Lod Airport attack. *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 Report describes how the formula the Court and the Special Commissioners created to determine how to distribute the limited funds to the numerous Puerto Rican Lod Airport victims was applied to Claimant. Although the 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, the Report does include some information relevant to our assessment.⁸ The Report awards Claimant points under the following categories: “Minor surgery” (as opposed to “Major surgery”); “Minimum care hospitalization” (as opposed to “Moderate care hospitalization” or “Intensive care hospitalization”); “Prolonged intensive care hospitalization or subsequent operations” in Puerto Rico (as opposed to “Moderate care hospitalization” or “Minimum care hospitalization”); and “Follow-up in clinics or equivalent for a short time” (as opposed to “Follow-up in clinics or equivalent for an extended time”). For the category “Current Status and Prognosis Related to the Event,” Claimant was awarded 200 points (out of a possible total of 600) under the sub-category “Permanently affected to a moderate degree.” In total, out of a maximum of 2,000 available points, Claimant was awarded 1,100. This included 50 points for psychological

⁸ This formula also differed from the 2009 Referral’s mandate and the Commission standard for physical-injury claims under the 2009 Referral. *See* Claim No. LIB-II-064, Decision No. LIB-II-073, *supra*, at 5-7; Claim No. LIB-II-088, Decision No. LIB-II-108, *supra*, at 4-6.

harm, which is outside the purview of this Commission's Libya claims programs. *Id.*; see also Claim No. LIB-II-128, Decision No. LIB-II-031 (2012).

Claimant has also submitted an affidavit dated June 24, 2010, from her niece, a medical doctor. Claimant's niece states that she traveled to Israel immediately after the Lod Airport terrorist attack and located the Claimant at the Tel Hashomer hospital, where Claimant was receiving treatment for a gunshot wound that fractured fingers of her left hand. Claimant's niece also states that Claimant sustained shrapnel wounds from a grenade to her head, left shoulder, and right thigh, and that after returning to Puerto Rico, Claimant underwent surgery to remove orthopedic pins in her left hand. Claimant's niece additionally states that Claimant underwent surgery a year after the attack to remove shrapnel that was causing Claimant pain, that Claimant's left hand is permanently disabled in the second, third, fourth, and fifth fingers, and that Claimant has permanent scarring on her head, left shoulder, and right thigh.

Finally, Claimant has also provided her own affidavit, dated July 31, 2014, in which she states, *inter alia*, that her third and fourth fingers were fractured and her fourth finger needed surgery to reposition it with a Kirschner nail. She further states that her "left hand never regained its strength" and she "still cannot completely close [her] hand. All of [her] physical activities have been affected since the attack. It takes much longer to perform daily activities like dressing and tying [her] shoes."

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, *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’s evidence is insufficient to meet her burden to prove that the severity of her physical injuries is a “special circumstance” warranting additional compensation in this claims program.

First, the nature and extent of the initial injuries Claimant suffered 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 Claimant had to go through during the attack and its immediate aftermath, the nature and extent of Claimant’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. Even assuming Claimant suffered all of the injuries alleged, her injured fingers and the shrapnel in various parts of her body are not enough to warrant additional compensation in this program.⁹ The Commission has previously denied additional compensation to other claimants whose physical injuries were worse than Claimant’s. *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

⁹ There is no *medical* evidence about the shrapnel, including the surgery to remove the shrapnel from Claimant’s buttocks. Thus, although we assume for purposes of our analysis that Claimant suffered some shrapnel wounds, she has not met her burden to prove these wounds.

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).

The second factor—the impact of the injury on claimant’s ability to perform major life functions and activities—also supports denial of the claim for additional compensation. Claimant has not demonstrated that the impact the injuries have had on her ability to perform major life functions and activities has been particularly severe. Claimant states that she is permanently disabled in the second, third, fourth, and fifth fingers of her left hand and, as a result, she cannot completely close that hand. She also contends that it takes her longer to perform daily activities such as dressing and tying her shoes. However, even assuming Claimant’s evidence were sufficient to substantiate these problems, she has provided no evidence that her injuries had a life-changing impact on her personal or professional life.¹⁰ A statement that a claimant is slower at certain

¹⁰ Other than the Tel Hashomer discharge summary, Claimant has provided no medical records at all. Thus, we have no medical documents that either discuss the recent medical condition of her hand or in any way connect her injury in the 1972 attack to her hand’s alleged current condition. Claimant is now 95 years old, and there could thus be numerous reasons why her hand cannot close or why she may be slower at certain daily activities.

activities is simply insufficient to constitute a significant enough impact on a claimant's ability to perform major life functions or activities to warrant additional compensation in this program. *See* Claim No. LIB-II-116, Decision No. LIB-II-166, *supra* at 5 (denying claim for additional compensation to claimant who, although unable to continue in his prior profession after his injuries, was eventually able to find work in a lower paying job).

The third factor—the degree of disfigurement—also supports our conclusion that the severity of Claimant's injuries is not a special circumstance warranting additional compensation. The third factor, while relevant, has only been important to the outcome when the disfigurement has been 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). Claimant does not appear to contend that there is a significant disfigurement in her fingers. While she does refer to scars, she has provided little information about them. Other than the "Questionnaire," which referred to them as "superficial" back in 1977, we have no information about their size, the degree of their severity, or whether, and to what degree, they have had an impact on Claimant's life. In sum, the severity of Claimant's injuries do not rise to the level of a special circumstance warranting additional compensation under Category D.

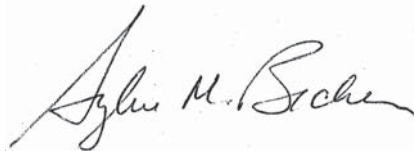
Conclusion

Having considered all of Claimant'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 the injuries in this claim does not rise to the level of a special circumstance warranting additional compensation. While we sympathize with all that Claimant has endured, she is not entitled to additional compensation beyond the \$3 million the Commission has already awarded her. Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, June 10, 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).