

**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 LUIS CONDE, DECEASED;	}	Claim No. LIB-III-022
SAMUEL CONDE LÓPEZ, ADMINISTRATOR	}	
	}	Decision No. LIB-III-037
	}	
	}	
Against the Great Socialist People’s	}	
Libyan Arab Jamahiriya	}	
	}	

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 Luis Conde during a terrorist attack at Lod Airport in Tel Aviv, Israel, on May 30, 1972. In that attack, Mr. Conde suffered shrapnel wounds to his right gluteus. Claimant Estate states that, as a result of these injuries, shrapnel pieces remained embedded in Mr. Conde’s gluteus, and he was weak and had difficulty walking for months after returning home to Puerto Rico. 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. Conde’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. Conde 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. After the attack ended, Mr. Conde was rushed to a local hospital, where he was admitted and received treatment for his injuries. He remained at the hospital for six days; he was then discharged and returned home to Puerto Rico. Claimant Estate alleges that Mr. Conde suffered long-term effects from his injuries, including difficulty with walking and sitting. Mr. Conde died in July 1977 of causes unrelated to the attack.

Although Mr. Conde's Estate was not among them, a number of the Lod Airport victims sued Libya (and others) in federal court in 2006. Neither Mr. Conde (who had already died) 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 (“ICSA”), 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 Category E of the January 2009 Referral, alleging that Mr. Conde had suffered physical injuries as a result of the Lod Airport attack. By Proposed Decision entered October 17, 2011, the Commission denied the claim, finding that Claimant Estate had not met its burden of providing enough evidence to establish that Mr. Conde suffered a physical injury sufficient to meet the Commission’s standard for physical-injury claims under the 2009 Referral. *See ESTATE OF LUIS CONDE*, Claim No. LIB-II-123, Decision No. LIB-II-091 (2011) (“Physical-Injury Proposed Decision”). The Claimant Estate objected and requested an oral hearing, which was held on March 15, 2012, and submitted additional evidence in support of its objection. In a Final Decision dated December 12, 2012, the Commission held that, considering the totality of the evidence, including the newly-submitted documents, Claimant Estate was eligible for compensation under Category E of the 2009 Referral and awarded it a fixed sum of \$3 million. *See ESTATE OF LUIS CONDE*, Claim No. LIB-II-123, Decision No. LIB-II-091 (2011) (“Physical-Injury Final Decision”).

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

McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, known as Category D, consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by our January 15, 2009 referral or by this referral, provided that (1) the claimant has received an award for physical injury pursuant to our January 15, 2009 referral or this referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the claimant did not make a claim or receive any compensation under Category D of our January 15, 2009 referral.

2013 Referral at ¶ 6.

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

On 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 Proposed Decision, the Commission noted that Mr. Samuel Conde López (one of Mr. Conde’s sons) had, by resolution dated June 29, 2011, been appointed as the administrator of his late father’s estate. Therefore, the Commission held

that the ESTATE OF LUIS CONDE, DECEASED; SAMUEL CONDE LÓPEZ, ADMINISTRATOR, was the proper claimant in that claim. As Mr. Conde López 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 Proposed 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 Proposed 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 for Mr. Conde's physical injuries

pursuant to 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 ¶ 6.¹ 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 [victim’s] ability to perform major life functions and activities—both on a temporary and on a permanent basis—and [(3)] the degree to which the [victim’s] injury has disfigured his or her outward appearance.” *Claim 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

¹ 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. Conde survived the Lod Airport attack and his subsequent death in 1977 was unrelated to the attack, only the first basis for entitlement is relevant here.

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 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. Conde’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. Conde was inside Lod Airport during the attack, and that he “sustained deep shrapnel wounds to his gluteal region” After the attack ended, Mr. Conde was taken to Tel Hashomer/Haim Sheba Medical Center for treatment, where he remained for six days.

Injuries Alleged: Claimant Estate asserts that, as a result of the Lod Airport attack, Mr. Conde suffered “two lacerations [in] the gluteal region[.]” It states that doctors “cleaned and treated the lacerations, but that “x-rays revealed ‘small shrapnel . . . in the gluteus.’” Citing the lead surgeon at the hospital the day of the attack, Claimant Estate asserts that Mr. Conde was at “‘serious risk of infection and aggravation of injury without medical treatment[.]’” and that the shrapnel was so deeply embedded that surgery

to remove it was not advised because the risk of damage to the affected area would have been too great.

Claimant Estate asserts that Mr. Conde's neighbors "recall [his] severely weakened condition upon returning to Puerto Rico after the attack." It states that "[h]is neighbors and fellow church members all recall that Mr. Conde was in pain and had difficulty walking[,]” and that some “recall that he had difficulty sitting[.]” and used a cane. The Estate notes that at least one witness claims that Mr. Conde was in this condition “for several months after the attack.” Claimant Estate does not, however, allege that Mr. Conde underwent any further medical treatment or suffered from any long-term medical conditions associated with his injuries.

Supporting Evidence

Claimant Estate has submitted, among other things, a contemporaneous medical record (the discharge summary from Tel Hashomer Hospital); copies of newspaper articles, published in the days following the incident, identifying claimant as one of those wounded in the attack; a 2012 certificate from Tel Hashomer Hospital confirming the dates of Mr. Conde's hospitalization; a 2012 affidavit and a 2012 letter from Dr. Raphael Walden, M.D., who was the lead surgeon on duty at Tel Hashomer on the night of the attack, discussing Mr. Conde's discharge summary and the nature of his injuries; and affidavits from four different individuals (non-family members) who saw Mr. Conde shortly after his return to Puerto Rico.²

² 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 525 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 discharge summary from Tel Hashomer Hospital indicates that Mr. Conde was admitted on May 30, 1972, with a “schrapnell [sic] wound [to the] Rt. Gluteus.” In particular, it notes that Mr. Conde was in “general good condition but for two lacerations [to] the gluteal region.” Regarding treatment, “[b]oth lacerations were cleaned[,]” although x-rays revealed that “a small schrapnell [sic] was left in the gluteus” However, Mr. Conde’s “wounds [were] clean and dry.” Finally, the summary indicates that Mr. Conde was released on June 5, 1972—six days after being admitted—and a notation on the letter indicates that he “needs no further treatment.” A Hospital Stay Certificate from Tel Hashomer Hospital, dated February 7, 2012, confirms that Mr. Conde was hospitalized from May 30 to June 5, 1972.

Claimant Estate has submitted no other medical records in support of its claim, and makes no allegations concerning long-term effects or whether Mr. Conde ever underwent additional treatment for his physical injuries. However, the Estate has submitted from Dr. Walden an affidavit dated February 7, 2012, and a letter dated March 21, 2012, discussing Mr. Conde’s injuries. Although Dr. Walden did not personally treat Mr. Conde, he states that, “[in] [his] experience, grenade shrapnel wounds generally cause significant damage to the patient.” Having reviewed the discharge summary, Dr. Walden concludes that Mr. Conde had “open wounds of his buttock, which did not become infected.” He states that “because Mr. Conde had multiple wounds, he was at greater risk of infection.” Moreover, he explains that “[t]here is always a danger of infection after shrapnel wounds and the surgical practice is not to suture them, should an

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.

infection manifest afterwards, which will necessitate opening the wound.” He also emphasizes that the characterization of the wounds as “clean and dry” meant only free of infection, not that the wounds were minor or superficial. According to Dr. Walden, the indication that no further treatment was needed meant only that he no longer needed hospitalization, although he “could have needed wound care at home and pain medicine after his release.” Finally, he asserts that “this type of wound could certainly cause the patient to suffer long term pain and limping.”

The Claimant Estate has submitted no other medical records in support of its claim. The only other documents evidencing Mr. Conde’s injuries are four recently-sworn affidavits from individuals who saw Mr. Conde in Puerto Rico shortly after his return from Israel: three from former neighbors of Mr. Conde, and one from an individual whose family attended the same church as Mr. Conde’s family. All of these individuals visited Mr. Conde at home shortly after his return home. One of the affiants states that Mr. Conde “had difficulty walking and used a cane and had trouble sitting.” Another affiant echoes these comments, adding that Mr. Conde “seemed to have problems in both legs” Yet another states that Mr. Conde “used a cane and did not walk normally[,]” and that Mr. Conde “mentioned that he was taking some pills but . . . do[es] not recall what pills they were[,]” although he “noticed that a bottle of those pills was always by his side.” And another affiant states that Mr. Conde “appeared to be in pain[.]” and “walked slowly and with a limp.” He adds that he “saw Luis Conde several times throughout the summer and into the fall of 1972[,]” and that “[e]ach time that [he] saw him . . . he appeared to be in pain and experienced some difficulty walking.”

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 severity of Mr. Conde’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. Conde suffered in the Lod Airport attack were among the most severe in this program. There is no doubt that Mr. Conde suffered two lacerations to his right buttock, was hospitalized for six days, and retained at least one small piece of shrapnel in his gluteus (although we do not know how long it remained there). However, the medical records do not suggest that Mr. Conde’s injuries were sufficiently severe to warrant additional compensation beyond the \$3 million the Claimant Estate has already received. For one, the discharge summary makes no reference whatsoever to surgeries or any other major form of treatment beyond cleaning of the wounds. In fact, it states that Mr. Conde was in “general good condition[,]” and, upon release, “need[ed] no further treatment.” Apart from the embedded shrapnel, there is no suggestion of significant structural damage to any part of Mr. Conde’s body.

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 at least as severe or worse than Mr. Conde'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 the four affiants all observed Mr. Conde walking with difficulty after his return home, and one mentioned that he “appeared to be in pain[.]” there are no medical records to support this. More importantly, there is no evidence to suggest that these problems, if indeed they existed, lasted beyond the few months after the incident or impaired Mr. Conde's major life functions and activities in any way.

The only medical evidence about Mr. Conde's life after he left the Tel Hashomer hospital is Dr. Walden's affidavit and letter. All Dr. Walden states is that Mr. Conde's injuries "*could* certainly cause the patient to suffer long term pain and suffering[.]" and that Mr. Conde "*could* have needed wound care at home" after his release (emphasis added). At no point does Dr. Walden assert that Mr. Conde *did* suffer any long-term impairment or require any subsequent medical care. Indeed as Dr. Walden himself admits, he did not personally treat Mr. Conde and never conducted an in-person medical examination.

Beyond the one-page discharge summary and Dr. Walden's affidavit and letter, Claimant Estate has submitted no other medical records in support of its claim. Indeed, it does not even allege that Mr. Conde did in fact suffer any long-term impairments, disability, or other conditions related to the Lod Airport attack. Without such evidence, it is impossible for the Commission to determine whether Mr. Conde suffered any impact on his major life functions and activities.

In sum, based on the current record, the Claimant Estate has not established that Mr. Conde'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. Conde's injuries is not a special circumstance warranting additional compensation. Claimant Estate has made no allegations concerning this aspect of the claim, and there is nothing in the evidence to support a conclusion that Mr. Conde suffered any significant scarring or disfigurement. As such, this factor does not provide support for an award of additional compensation.

CONCLUSION

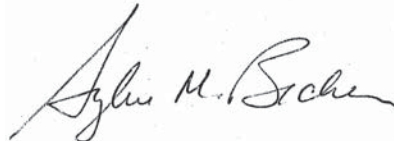
Having considered all of Claimant Estate's evidence in light of the severity of the injuries suffered by all the claimants who have sought additional compensation in these Libyan claims programs, the Commission concludes that the severity of Mr. Conde's injuries does not rise to the level of a special circumstance warranting additional compensation. While we sympathize with all that Mr. Conde 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, November 19, 2015
and entered as the Proposed Decision
of the Commission.

**This decision was entered as the
Commission's Final Decision on**
January 14, 2016



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).