

Recognition Act, which established a supplemental war claims compensation program for claims arising from the attack and occupation of Guam by Imperial Japanese military forces during World War II. The Act recognizes two categories of eligible claimants: “compensable Guam decedent” and “compensable Guam victim.”² The Act defines a “compensable Guam victim” as

an individual who is not deceased as of the date of the enactment of this Act and who is determined . . . to have suffered, as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II, or incident to the liberation of Guam by United States military forces, any of the following:

(A) Rape or severe personal injury (such as loss of a limb, dismemberment, or paralysis).

(B) Forced labor or a personal injury not under subparagraph (A) (such as disfigurement, scarring, or burns).

(C) Forced march, internment, or hiding to evade internment.³

On June 20, 2017, the Commission published notice in the *Federal Register* announcing the commencement of a program to adjudicate claims for compensation under the Guam World War II Loyalty Recognition Act.⁴ On October 2, 2017, the Commission received from Claimant a Statement of Claim seeking compensation under the Act as a compensable Guam victim.

DISCUSSION

As noted above, the Guam World War II Loyalty Recognition Act authorizes the Commission to award compensation to “compensable Guam victims,” which the Act defines as limited to individuals who (1) were alive on December 23, 2016, and (2) are determined to have suffered any of the following: rape, severe personal injury, personal injury, forced labor, forced march, internment, and hiding to evade internment.⁵

² *Id.* § 1704(c)(1)-(2).

³ *Id.* § 1704(c)(2).

⁴ Notice of Commencement of Claims Adjudication Program and of Deadline for Filing of Claims, 82 Fed. Reg. 28,093 (June 20, 2017).

⁵ See Guam World War II Loyalty Recognition Act §§ 1704(a), 1704(c)(2), 1705(a)(1).

1. Claimant Living on December 23, 2016

Claimant has submitted sufficient evidence to establish that she was living on December 23, 2016. She has provided a sworn and notarized claim form that she signed after the Commission published notice of the program's commencement on June 20, 2017. Further, our review of death records from the Social Security Administration and other databases has yielded no evidence that Claimant was not living on December 23, 2016. Therefore, Claimant meets this element of her claim.

2. Claimant Suffered an Injury Compensable Under the GLRA

Claimant asserts that she suffered five injuries recognized under the Act: rape, personal injury, forced labor, forced march, and hiding to evade internment.⁶ The alleged injuries fall within separate categories of Section 1704(a)(1). Rape falls within Section 1704(a)(1)(A) ("Category A") and is compensable at a higher rate than the other alleged injuries, which fall within Section 1704(a)(1)(B) ("Category B") or Section 1704(a)(1)(C) ("Category C").⁷ Under the Act, however, a claimant may be compensated only under a single category.⁸ Thus a claimant who establishes entitlement to compensation for rape (Category A) is not eligible for additional compensation for forced labor or personal injury (Category B), or for forced march, internment, or hiding to evade internment (Category C). We thus consider first whether Claimant suffered a rape within the meaning of the Act.

A. *Rape*

Factual Allegations

Claimant asserts that she was a Guam resident on December 8, 1941, when Japan attacked the island. She states that in "approximately August 1944," she, her family, and many other

⁶ See *id.* §§ 1704(a)(1)(A)-(C), 1704(c)(2).

⁷ See *id.*

⁸ See *id.* § 1704(a)(1).

Chamorros were forced by Japanese forces to march to Manenggon, Yona. When Claimant, who was carrying her one-year-old brother, momentarily stopped marching at one point, a Japanese soldier “grope[d] [her] from behind,” knocking her brother to the ground, and “penetrated” her. Claimant states that she suffered humiliation and guilt for a long time because of this experience.

Supporting Evidence

Claimant has submitted a sworn Statement of Claim, including a notarized affidavit that describes the circumstances of her injuries. The Commission also takes notice of evidence cited in other decisions in this Guam Claims Program, noting that “the testimony of Guam residents and naval records that address the investigation and prosecution of war crimes make clear that Japanese soldiers continued to rape, kill, and physically assault Guamanian civilians during the entire period that they occupied the island.”⁹ We further take notice of the June 2004 report of the Guam War Claims Review Commission, which found that “the Japanese forced many of the Chamorro women to work for them as housekeepers and laundresses, and at their whim . . . raped many of them . . . and others were forced to serve as ‘comfort women’ (i.e., prostitutes).”¹⁰

Legal Standard

Neither the GLRA itself, nor regulations issued by the Commission on April 3, 2017,¹¹ define the injury of rape that Claimant alleges here. Thus, to determine the standard for establishing the injury of “rape” under the GLRA, we consider other sources of law that define the term in the context of analogous claims.

While no domestic statute authorizing compensation for war claims arising from World War II specifically recognizes “rape” as a compensable injury, the War Crimes Act of 1996, a U.S.

⁹ Claim No. GUAM-0232, Decision No. GUAM-0001, at 7 (2018).

¹⁰ Guam War Claims Review Commission, *Report on the Implementation of the Guam Meritorious Claims Act of 1945*, at 5 (2004).

¹¹ The regulations provide definitions for two injuries recognized under the GLRA: “personal injury” and “severe personal injury.” See 45 C.F.R. § 510.1 (2018).

law enacted to provide criminal penalties for certain war crimes defines the offense of rape as follows:

The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.¹²

Similarly, the Commission, in adjudicating claims involving allegations of sodomy in its Iraq Claims Program, noted that legal authorities have defined “rape” as including “any situation” in which the “perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of . . . the anal . . . opening of the victim with any object . . . and . . . [t]he invasion was committed by force, or by the threat of force or coercion” and, additionally, “the sexual penetration, however slight . . . of the . . . anus of the victim by . . . any . . . object used by the perpetrator; where such penetration occurs without the consent of the victim. . . .”¹³ The common element in these definitions is the use or threatened use of force to invade by penetration the anal or genital opening of the claimant’s body.

We therefore conclude that to establish the injury of “rape” under the GLRA, a claimant must show that a perpetrator forcibly, or with coercion or threat of force, invaded the claimant’s body by penetrating, however slightly, the anal or genital opening of the claimant with any part of the body of the perpetrator, or with any foreign object.

Application of Standard to this Claim

The GLRA provides that the Commission “shall treat a claim that is accompanied by an affidavit of an individual that attests to all material facts required for establishing the eligibility of

¹² War Crimes Act of 1996, Pub. L. 104-192, § 2(a), 110 Stat. 2104 (1996), *amended by*, United States Military Commissions Act of 2006, Pub. L. 109-366, § 6(b)(1)(B), 120 Stat. 2634 (2006) (current version at 18 U.S.C. § 2441(d)(1)(G)).

¹³ Claim No. IRQ-I-009, Decision No. IRQ-I-004, at 6 (2014) (Proposed Decision) (citations omitted). *See also* Claim No. IRQ-I-023, Decision No. IRQ-I-021, at 13 (2014) (Proposed Decision); Claim No. IRQ-I-026, Decision No. IRQ-I-025, at 14 (2014) (Proposed Decision).

such individual for payment . . . as establishing a prima facie case of the eligibility of the individual for such payment without the need for further documentation, except as the Commission may otherwise require.”¹⁴ The Act further provides that “[s]uch material facts shall include . . . a detailed description of the injury or other circumstances supporting the claim involved.”¹⁵ Thus, to determine whether Claimant has satisfied the standard for the injury of rape in this program, we look to the account of her injuries set forth in the sworn affidavit attached to her claim form.

Claimant’s sworn affidavit stating that a Japanese soldier “grope[d] [her] from behind” and “penetrated” her sets forth all material facts required to make a *prima facie* case that she was subjected to rape as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II. Claimant’s sworn statements are consistent with the evidence in the record, which shows that Japanese soldiers raped Guamanian civilians during the entire period that they occupied the island under the standard that applies in this program.¹⁶ In the absence of rebutting evidence, Claimant’s sworn affidavit is sufficient to establish that she was among the Guamanians who were subjected to rape within the meaning of the GLRA.

In sum, this claim meets the standard for the injury of rape, and Claimant is thus entitled to compensation.

B. Personal Injury, Forced Labor, Forced March, Internment and Hiding to Evade Internment

Because Claimant has established the elements of a claim for rape, she is not eligible for additional compensation for personal injury, forced labor, forced march, internment, or hiding to evade internment.¹⁷ We thus need not determine whether she also suffered any of those injuries.

¹⁴ Guam World War II Loyalty Recognition Act § 1705(b)(9).

¹⁵ *See id.*

¹⁶ *See* Claim No. GUAM-0232, Decision No. GUAM-0001, at 7 (2018).

¹⁷ Guam World War II Loyalty Recognition Act §§ 1704(a)(1)(B) and (C), 1704(c)(2)(B).

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

Our determination in this regard is governed by the express terms of the GLRA. Specifically, the Act provides that a claimant who establishes a meritorious claim as a “compensable Guam victim” is entitled to an award that is based on the classification of his or her injury under the three categories of compensation set forth in Section 1704 of the GLRA.¹⁸ Because Claimant suffered the injury of rape, she is entitled to a single payment of \$15,000.¹⁹

Deductions in Payment

Pursuant to the GLRA, the Commission is required to deduct, from a payment made to a compensable Guam victim or survivors of a compensable Guam decedent, amounts paid to such victim or survivors under the Guam Meritorious Claims Act of 1945, Public Law 79-224,²⁰ before the date of the enactment of the GLRA.²¹ The evidence in the record, however, does not show that the United States Government has provided Claimant any compensation under the 1945 Act. Therefore, no deduction in payment will be made from her award.

In summary, Claimant is entitled to an award of \$15,000. This amount constitutes the entirety of the compensation to which Claimant is entitled under the GLRA.²² The Commission

¹⁸ *See id.* § 1704(a)(1)(A)-(C).

¹⁹ *See id.* §§ 1704(a)(1)(A), 1704(c)(2)(A); Claim No. GUAM-0232, Decision No. GUAM-001, at 20-21 (holding that “Section 1704 also makes clear that a claimant who suffered multiple injuries is limited to a single payment of \$10,000, \$12,000, or \$15,000 that is determined by the category of compensation that applies to his or her most highly remunerated individual injury under the Act.”).

²⁰ *See An Act: For the relief of the residents of Guam through the settlement of meritorious claims*, ch. 483, Pub. L. 79-224, 59 Stat. 582 (1945).

²¹ *See Guam World War II Loyalty Recognition Act* § 1705(b)(4).

²² Under the GLRA, interest is not available on payments made by the Commission under Section 1704. *Id.* § 1705(b)(5).

hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under Section 1705 of the GLRA.²³

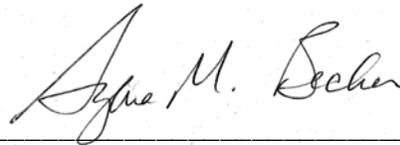
AWARD

Claimant is entitled to an award in the amount of \$15,000.

Dated at Washington, DC, September 17, 2020
and entered as the Proposed Decision
of the Commission.

**This decision was entered as the
Commission's Final Decision on**

November 10, 2020



Sylvia M. Becker, Commissioner



Patrick Hovakimian, 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), 510.3 (2019).

²³ *Id.* § 1705(b)(8).