

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

In the Matter of the Claim of

(b) (6)

Under the Guam World War II Loyalty Recognition
Act, Title XVII, Public Law 114-328

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} Claim No. GUAM-2704
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} Decision No. GUAM-3303
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Counsel for Claimant:

Sandra Miller, Esq.
Sandra Miller, Attorney at Law

PROPOSED DECISION

Claimant brings this claim under Sections 1704 and 1705 of the Guam World War II Loyalty Recognition Act¹ for injuries allegedly suffered as a result of the occupation of Guam by Imperial Japanese military forces during World War II or incident to the liberation of Guam by U.S. military forces. Because Claimant has not established that her injuries resulted from the occupation or liberation of Guam, this claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was present on the island of Palau in 1944 when the Japanese Imperial Army occupied Guam and the U.S. military had begun operations there to liberate the island. She asserts that her family heard that Japanese soldiers were killing Chamorros due to their perceived loyalty to the United States, so she and other members of her family fled into the jungle to avoid

¹ Guam World War II Loyalty Recognition Act, Pub. L. 114-328, tit. XVII, 130 Stat. 2642 (2016) (“GLRA” or “Act”).

capture. The following day, they emerged onto a beach where an American warship was anchored offshore. Claimant states that her father and uncle swam to the ship for help, and they later returned with a raft that brought them aboard. They were eventually brought to safety in Saipan.

On December 23, 2016, President Obama signed into law the Guam World War II Loyalty 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 June 18, 2018, the Commission received from Claimant a completed Statement of Claim seeking compensation under the Act as a compensable Guam victim.

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).

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 one of certain enumerated injuries 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.⁵

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. Injury Compensable Under the GLRA

Claimant asserts a claim under only one of the six categories of injury listed under the Act—hiding to evade internment.⁶ In support of this claim, she has submitted a sworn Statement of Claim, as well as a notarized affidavit, dated June 6, 2018, describing the circumstances of her alleged injury. The Commission has, through publicly-available databases, separately verified Claimant’s reported date of birth, proving that she was alive at the time the alleged injuries took place. The question remaining is whether Claimant’s injury is eligible for compensation under the GLRA.

Factual Allegations

Claimant asserts that she and her family were living on the island of Palau in 1944 during the Japanese occupation of Guam. She states that her “uncle got news that the Americans had come back

⁵ See GLRA, §§ 1704(a), 1704(c)(2), 1705(a)(1).

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

to Guam and that the Japanese were being defeated.” Her uncle also heard that “the Japanese soldiers were killing all the Chamorros because they knew [they] were loyal to the Americans.”⁷ Further, Claimant’s uncle had heard that “the Japanese soldiers stationed in Palau had been given orders to hunt and kill [them] because [they] were Guamanian Chamorros who were loyal to the Americans.” Therefore, to avoid capture, Claimant and her family “gathered together to hide from the soldiers.” When it became dark, they walked into the jungle and, after walking all night, they arrived on a beach “where an American ship was parked in the distance.” Claimant’s father and uncle swam out to the ship and, after a while, returned with a raft, which they used to take Claimant and the other members of the family out to the ship.⁸ Claimant states that the Americans then took her family to Saipan “because the port in Guam was closed.” They stayed there for about three years, and when the port finally opened, they returned to Guam.

Legal Standard and Application to This Claim

To establish a claim for “hiding to evade internment,” a claimant “must show that he or she withdrew from observation or kept from sight with the intention of thereby averting a taking or seizure.”⁹ The GLRA further requires that the injury have been 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”¹⁰ The issue in this claim is whether Claimant’s alleged injury was suffered “as a result of the attack and occupation of Guam” or “incident to the liberation of Guam.”

⁷ There is some evidence in the public record that the Japanese military officers in Palau were concerned that the native population might provide aid to the American forces, but there is no indication that such concerns were a consequence of the Japanese occupation of Guam or were related to its liberation by U.S. forces. *See* Bruce M. Petty, *Saipan: Oral Histories of the Pacific War* 73-74 (2002).

⁸ At least one separate witness has validated this story, noting that “[w]hile [his] family was on Palau some Chamorros and some Palauans escaped to the American ships offshore” *Id.* at 78.

⁹ Claim No. GUAM-0232, Decision No. GUAM-0001, at 17 (2018).

¹⁰ GLRA, § 1704(c)(2).

By Claimant's own admission, she and her family were located on the island of Palau at time of her alleged injuries. Although she maintains that she and her family went into hiding to avoid Japanese soldiers who had been given orders to "hunt and kill" Guamanian Chamorros, she does not claim that she went into hiding as a result of the occupation of Guam or its liberation. Rather, she states that this was necessary because the Japanese military viewed her and her family as "loyal to the Americans," which Claimant appears to suggest was a consequence of her Guamanian origin. This does not, however, mean that the alleged order or Claimant's reaction to it occurred "as a result" of the occupation of Guam or "incident to" its liberation. Indeed, Claimant's allegations describe, at most, a strategy by the Japanese to identify and capture those Chamorros who might be suspected of supporting the United States out of a sense of affinity with their fellow Chamorros on Guam. While this may indicate a motivation for Japanese soldiers to capture Guamanian Chamorros on Palau, it is insufficient to prove that Claimant's injury resulted from the occupation or liberation of Guam. Both the alleged injury (hiding to evade internment) and the actions of the Japanese military which are said to have caused it (alleged orders to capture Guamanian Chamorros) took place on Palau. Claimant's alleged injury, therefore, did not occur "as a result of the attack and occupation of Guam" or "incident to the liberation of Guam." The injury is thus not eligible for compensation under the GLRA.

The Commission notes that this conclusion is consistent with the provision of the Guam Meritorious Claims Act of 1945 ("GMCA") excluding claims "not arising in Guam."¹¹ As the Commission has previously indicated, the GLRA was passed in part to address the findings of the Guam War Claims Review Commission, which found in its report that

¹¹ 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); *see also* U.S. Dep't of the Navy, *Regulations for the Administration of Public Law 224, 79th Congress, Approved 15 November 1945*, § 2(g) (May 3, 1946), *reprinted in* Guam War Claims Rev. Comm'n, *Report on the Implementation of the Guam Meritorious Claims Act of 1945* app. B(8) (2004) ("Claims not arising in Guam may not be considered by any such claims commission.").

in some respects, there was a lack of parity of war claims paid to the residents of Guam under the GMCA compared with awards that claimants who suffered similar injuries received under the War Claims Act and other laws providing compensation for U.S. nationals who were killed or injured as a result of an invasion or occupation by the Japanese Imperial forces during World War II.¹²


This lack of parity, however, did not extend to claims “not arising in Guam,” which were outside the scope of the GMCA.¹³ The purpose of the GLRA, therefore, would not be served by compensating for claims based on injuries, such as this one, not suffered on Guam. For these reasons, the Commission concludes that Claimant is not a “compensable Guam victim” within the meaning of the Act.

Accordingly, while the Commission recognizes “the threat of death or great bodily harm” that Claimant, like the residents of Guam, may have “faced at the hands of the Imperial Japanese military forces” during World War II,¹⁴ it is constrained to conclude that this claim is not eligible for compensation under the Act. Thus, this claim must be and is hereby denied. The Commission makes no determinations about any other aspect of this claim.


Dated at Washington, DC, November 19, 2020
and entered as the Proposed Decision
of the Commission.

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

July 12, 2021



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).

¹² Claim No. GUAM-0232, Decision No. GUAM-0001, at 2 (citing Guam War Claims Rev. Comm’n, *supra* note 11, at 77-78 (2004)).

¹³ See generally Guam War Claims Rev. Comm’n, *supra* note 11.

¹⁴ GLRA, § 1702(b).