

**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. IRQ-I-004
	}	
	}	Decision No. IRQ-I-010
Against the Republic of Iraq	}	

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Kuwait and Iraq between August and October 1990. The United States Department of State has already provided him \$565,000 compensation for his experience as a hostage. He now seeks additional compensation based on a claim that his time in captivity led to numerous injuries, including weight loss, a rash, depression, and aggravation of his obsessive-compulsive disorder (OCD). Although we are sympathetic to all that Claimant endured as a result of his hostage experience, Claimant has not alleged any discrete act of sufficient brutality or cruelty causing his injuries and thus, under the terms of this program, he is not entitled to additional compensation. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant, who was 19 years old at the time of his captivity, alleges that he was living with his family in Kuwait when Iraq attacked Kuwait in August 1990. He claims that Iraq effectively held him hostage until October of that year, first for three weeks in the U.S. Embassy in Kuwait and for the rest of the time in Baghdad in a U.S. Embassy apartment. Claimant's experiences and injuries are detailed in the Merits section below. Key to his claim is the assertion that, "as a consequence of his hostage-taking experience, he has suffered from long-term psychological injuries, which have substantially interfered with his ability to enjoy life and which are above and beyond the baseline level of personal injuries suffered by the hostages in general."

Claimant later sued Iraq in federal court for, among other things, hostage-taking. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally associated with" being held hostage or subject to

unlawful detention.¹ Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. For Claimant, this was \$565,000 total.

The State Department's Legal Adviser subsequently requested that the Commission commence a claims program for some of the hostages that it had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who suffered a "serious personal injury," when that injury was "knowingly inflicted ... by Iraq" and the severity of that injury is a "special circumstance warranting additional compensation." The State Department made its request in a letter dated November 14, 2012 pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to "receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or of any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State"). The letter sets forth the category of claims as follows:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq¹ in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking² provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State³ for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, "serious personal injury" may include instances of serious physical, mental, or emotional injury arising from sexual

¹ A group of hostages, not including claimant, received compensation for economic loss. As we explain in more detail below, the hostages that received compensation for economic loss are not before the Commission in this program.

assault, coercive interrogation, mock execution, or aggravated physical assault.

¹ For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

² Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

³ The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”) at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. Commencement of Iraq Claims Adjudication Program, 78 Fed. Reg. 18,365 (Mar. 26, 2013).

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of compensation from the Department of State for his claim of hostage-taking, and the severity of his alleged personal injuries.

DISCUSSION

Jurisdiction

The 2012 Referral’s statement of the category of claims defines the Commission’s jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has

jurisdiction to entertain only claims of individuals who (1) are U.S. nationals and (2) “already received compensation under the Claims Settlement Agreement from the Department of State¹ for [their] claim of hostage-taking,” where “such compensation did not include economic loss based on a judgment against Iraq[.]” 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

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 at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 5-6 (2014) (Proposed Decision). Claimant satisfies the nationality requirement. He has provided a copy of two U.S. passports: one from the time of the hostage-taking (valid from February 1987 to February 1992) and his current one (valid from May 2007 to May 2017).

Compensation from the Department of State

The second requirement for jurisdiction under the 2012 Referral is that the claimant must have already received compensation under the Claims Settlement Agreement from the Department of State for his or her claim of hostage-taking, and that compensation must not have included economic loss based on a judgment against Iraq. In support of this aspect of his claim, Claimant has submitted a copy of a Release he signed on August 15, 2011, indicating that he would accept a given sum from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of State that he was paid this sum on

October 8, 2011. Claimant further stated under oath in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq. The Claimant has therefore satisfied this element of his claim.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

Merits

The 2012 Referral limits claims in this program to those for “serious personal injuries knowingly inflicted upon [the claimant] by Iraq.” The Referral explains that, “[f]or the purposes of this referral, ‘serious personal injury’ may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.” It further limits compensation to those cases in which “the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation.”

As the language makes clear, the 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of his or her claim. First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” The Commission has held that in order to satisfy this standard, the injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a

similar level of brutality or cruelty as the four enumerated acts. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014).

The second requirement is that Iraq must have “knowingly inflicted” the injury. Thus, even where a claimant suffered a serious personal injury that satisfies the other requirements in the 2012 Referral, the claimant must prove that Iraq knowingly inflicted the injury.²

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” In making this determination, the Commission will consider the nature and extent of the injury itself (including the specific acts committed by Iraq giving rise to such injury), the extent to which the injury substantially limits one or more of the claimant’s major life activities (both in the immediate aftermath of the injury and on a long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury. *Id.*

Here, the facts Claimant alleges do not satisfy the requirement that Claimant have suffered a “serious personal injury” within the meaning of the Referral. We thus need not address the question of whether Iraq “knowingly inflicted” such an injury on him or whether the severity of his injuries constitutes a “special circumstance warranting additional compensation.”

A review of the facts Claimant alleges³ shows that although he most likely suffered tremendously, he cannot recover under the Referral because his injuries did not

² “Iraq” is defined in footnote 1 of the Referral.

³ In support of his claim, Claimant has provided, *inter alia*, two sworn statements, dated July 12, 2007, and June 21, 2013, in which he describes his hostage experience and his alleged serious personal injuries;

arise from “sexual assault, coercive interrogation, mock execution, or aggravated physical assault” or any other acts comparable in brutality or cruelty.

Kuwait City: Claimant was living with his family in Kuwait City when Iraq invaded Kuwait on August 2, 1990. He states that he heard “gunfire and shelling,” and that he “feared that [he and his family] might be captured by Iraqi forces or killed by nearby shelling.” At one point, he left the apartment to walk his dog, but when he encountered an Iraqi soldier in the lobby, he turned around and went back to the elevator; Claimant explains that his “heart was racing because reports had already been circulating that the Iraqi military was rounding up Westerners.” His father, who was employed at the U.S. Embassy, had walked to the embassy earlier in the day, and Claimant became concerned when his father did not return home that evening, stating that he “dreaded what might happen with him.”

The next day, a U.S. Embassy vehicle took Claimant and his family to the embassy compound. As they drove through the city, he “saw the destruction first-hand and realized we would not soon be leaving Kuwait.” Claimant describes how the embassy “was so crowded with families seeking refuge that [they] spent [their] first two nights in a storage room[,]” and with “carefully rationed” food. The overcrowding was corroborated by another person detained in the embassy compound who said that there

sworn statements from two other individuals who were held hostage in Kuwait and Iraq during the same time period; two letters, from April 2004 and May 2014, from a psychiatrist who has treated Claimant since the time of his hostage experience, and which discuss Claimant’s mental conditions and their relation to his experience in Iraq and Kuwait; a copy of the visa page from Claimant’s expired U.S. passport showing his entry into Kuwait in 1989 and his departure to Jordan on October 23, 1990; a 1992 letter from the Department of State confirming his hostage status between August 2, 1990 and October 24, 1990; and copies of various contemporaneous newspaper articles describing his ordeal. Although we make no findings on the specific facts Claimant alleges, we have no reason to doubt the broad outlines of his allegations. Indeed, by awarding Claimant compensation, the State Department has necessarily concluded that Iraq took him hostage or unlawfully detained him.

were “about 150 people—including many families—staying there, and it was difficult to move around the compound because of the crowding.” Claimant states that he “lived in constant fear that [their] position would be stormed by Iraqi forces and that [he] and [his] family would be killed or forced to serve as ‘human shields’ at a strategic site.” He further states that he “knew of the horrors Saddam Hussein had inflicted on [the Iraqi] people and worried that [Hussein] would visit similar horrors on [Claimant] and [his] family.”

Travel from Kuwait to Baghdad: After three weeks inside the embassy compound in Kuwait, Claimant traveled with a diplomatic convoy to Baghdad because Iraqi authorities had assured them that, upon arrival in Baghdad, they would be permitted to leave Iraq. Two other individuals described the Iraq-Kuwait border area as full of “chaos and pandemonium,” with the temperature soaring to 120 degrees while those in the convoy were forced to wait in an “un-shaded asphalt parking lot.” Claimant states this is consistent with his recollection of the experience.

Baghdad: After the convoy arrived in Baghdad, Claimant “heard the devastating news that the Iraqi authorities had broken their promise by ordering the continued detention of [everyone] from the convoy.” Two days later, the authorities announced that “diplomatic women and children,” including Claimant, his mother, and his sister, would be allowed to leave Iraq. Claimant was “furious and heartsick,” however, that his father would have to stay behind.

Claimant traveled with a convoy headed for Turkey on August 26, 1990. He describes how “[t]he trip, through excruciating heat, lasted 17 hours[,]” and they encountered numerous checkpoints. They were then forced to wait at the border crossing

for an additional seven hours. Claimant states that “[j]ust before crossing the border, Iraqi officials first issued, and then canceled[,] [Claimant’s] exit visa because [he] was of military age.” They then separated him from the other members of the convoy and drove him back to Baghdad. Once there, he was housed in a U.S. Embassy apartment with his father and other Americans, and he remained there for approximately two months.

Claimant alleges that, during this time, he “live[d] in a state of constant anxiety and stress.” He also claims that he suffered from depression and that the anxiety “made it very hard to sleep.” At one point, he was told he would be permitted to leave with a humanitarian mission that had arrived in Baghdad; however, upon arriving at the airport, he was again denied a visa and returned to the embassy. On October 23, 1990, Claimant was finally issued an exit visa and departed Iraq. Despite his release, however, Claimant felt “tormented by thoughts of [his] father, fearing that [he] would never see him again.”

Injuries Alleged: All of Claimant’s alleged injuries are mental, not physical, and they result from the emotional harm he suffered from having been held against his will in Kuwait and Iraq. Claimant states that, upon his return home, he felt that he was “not the same person [he] had been[,]” and that he “had lost 20 pounds, picked up a rash, and aggravated [his] later diagnosed obsessive-compulsive disorder due to [his] constant anxiety and fear during captivity.” He adds that he “felt isolated and detached from everything.” Further, he states that he “became very self-conscious about [his] obsessive-compulsive disorder, fearing people would notice.” He claims that “[b]y the time [he] reached graduate school, [he] was having serious problems with depression, manifested in frequent and debilitating episodes of despondency.” Claimant asserts that, at one point, his depression was so severe that he was unable to leave his apartment and missed

classes for two weeks. He alleges that he has “since been diagnosed with obsessive-compulsive disorder and continue[s] to take prescription antidepressants.” In addition, he states that he “still suffer[s] from erratic sleeping patterns” and “continue[s] to be haunted by memories of [his] captivity ordeal.” The medical records from Claimant’s treating psychiatrist, who began treating him shortly after the incident, confirm his mental and emotional conditions. The physician notes that Claimant suffered, and continues to suffer, from depression and aggravation of OCD related to his hostage experience in Iraq and Kuwait, conditions for which Claimant continues to take prescription medication.

Analysis: Claimant argues that his injuries qualify as “serious personal injuries” and are severe enough to constitute a “special circumstance warranting additional compensation” in this program. He has not, however, alleged facts sufficient to satisfy the legal standard to make out a “serious personal injury” under the Referral. Claimant contends that his injuries arose solely from his captivity as a hostage, and not from any discrete or specific act or acts other than the hostage-taking. Thus, Claimant’s legal theory is that injuries that arose solely from the hostage experience itself can warrant compensation under the Referral as long as those injuries are “substantially more severe than those suffered by the large majority of others who were subjected to Iraq’s hostage-taking policy”

Commission precedent requires us to reject this argument. As noted above, the Commission has previously interpreted the phrase “serious personal injury” in the Referral to mean injuries arising from one of the Referral’s four enumerated acts or some other act of a similar type or a similar level of brutality or cruelty. *See* Claim No. IRQ-I-

005, Decision No. IRQ-I-001 (2014); *see supra* at 6-7. Because Claimant alleges no such act here, his claim must be denied.

In sum, after carefully considering all of Claimant's evidence, the Commission concludes that none of the injuries alleged by Claimant constitutes a "serious personal injury" within the meaning of the 2012 Referral. Although we sympathize with all that Claimant has experienced both during and since his captivity in Iraq and Kuwait, the facts he alleges do not satisfy the legal standard for compensation in this program.

Accordingly, this claim must be and is hereby denied.

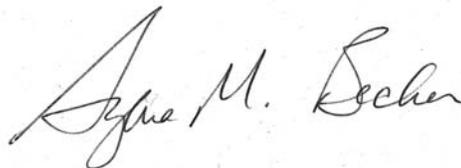
Dated at Washington, DC, April 11, 2014
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner

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

June 06 2014



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) (2013).