

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-195

Decision No. LIB-II-058

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on physical injuries said to have been sustained by ^{5 U.S.C. §552(b)(6)} as a result of the bombing of the LaBelle Discotheque in Berlin, Germany, on April 5, 1986.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim 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.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* ("January Referral Letter").

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to

the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On September 7, 2010, the Commission received from claimant a Statement of Claim in which he alleges that he suffered injuries, including ear pain and post-traumatic stress disorder (PTSD), as a result of the bombing of the LaBelle Discotheque in Berlin, Germany, on April 5, 1986. Claimant asserts that after the explosion he escaped from the discotheque through a hole in the wall, “jumped in a cab and went to the Berlin Army Hospital ... where [he] received treatment for [his] ear which was bleeding.” Claimant further asserts that he “was given 800 mg of Motrin and sent on his way.” In support of his claim, claimant has submitted his birth certificate, military duty records, medical records dated July 23, 2010 and August 9, 2010, and a third-party affidavit relating to his presence at the scene of the bombing.

DISCUSSION

Nationality

In *Claim of* ^{5 U.S.C. §552(b)(6)}, Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order to meet the nationality requirement, the claimant must have been a national of the United States, as that term is defined in the Commission’s authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. The claimant, however, has failed to submit any evidence of his U.S. nationality with his Statement of Claim.

Commission staff, by letter dated September 15, 2010, requested that claimant provide evidence establishing his U.S. nationality. In response, claimant provided a copy

of his birth certificate establishing his birth in the United States, but he did not submit evidence of his continuous U.S. nationality. By letter dated May 6, 2011, the Commission staff provided claimant a further opportunity to provide evidence of his continuous nationality, but he has failed to respond to this request. Consequently, the claim must be rejected on this ground alone. Even if claimant were to establish continuous U.S. nationality, however, this claim would nonetheless have to be rejected for the claimant's failure to establish the substantive elements of his claim, as discussed below.

Merits

In support of his assertion that he was present at the scene of the bombing incident, the claimant has submitted an affidavit by one Cedric Woolfork, who is listed as a victim of the LaBelle incident on the Army Criminal Investigative Division (CID) list of individuals present at the LaBelle bombing¹, and copies of military records which indicate that claimant was stationed in Germany at the time of the bombing. The Commission notes, however, that the aforementioned Army CID list does not include claimant's name. The Commission further notes that Mr. Woolfork's affidavit is inconsistent with claimant's description of his experience. Specifically, the claimant asserts in his Statement of Claim that he "jumped in a cab and went to the Berlin Army Hospital ... where [he] received treatment for [his] ear which was bleeding." In contrast, Mr. Woolfork states:

I later saw 5 U.S.C. §552(b)(6) after the explosion outside the club with approximately two hundred others who were unfortunate enough to be in the Labelle disco during the bombing/explosion. All military personnel in the club, including 5 U.S.C. §552(b)(6) were transported to a hospital in Frankfurt, West Germany for medical treatment/evaluation. I once again, saw 5 U.S.C. §552(b)(6) present during the transport to the hospital in Frankfurt and during the treatment/evaluation.

¹ This list was not provided by the claimant, but rather was obtained from the State Department to assist the Commission in adjudicating claims under this Referral.

Moreover, the Commission notes that the military duty records submitted by claimant merely reflect that he may have been in Germany at the time of this incident. In light of the foregoing the Commission is not persuaded that the claimant was present at the LaBelle Discotheque bombing.

More importantly, however, the Commission held in *Claim of* ^{5 U.S.C. §552(b)(6)}, Claim No. LIB-II-039, Dec. No. LIB-II-015 (2010), that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant: (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and (2) must have received medical treatment for the physical injury within a reasonable time; and (3) must verify the injury by medical records. *Id., supra*, at 6-7.

Claimant has asserted that he suffered injury to his ears, but the medical records submitted by the claimant show only a diagnosis of PTSD. With regard to the claim of PTSD, as stated above, under subsection 4(a) of the ICSA, the Commission's jurisdiction is limited to the categories of claims defined in the January Referral Letter. Under Category E of the January Referral Letter, the Commission may only provide compensation for claims for physical injury and wrongful death. This specific reference to compensation for "physical injury" claims, and not "personal injury" claims more broadly, makes clear that the Secretary of State drew a clear distinction between physical and mental injuries, and opted to provide compensation only for the former under this Referral. Thus, the January Referral Letter contemplates a distinction between the two types of injuries and precludes the Commission from compensating for anything other than physical injuries. For the Commission to do otherwise would render the term "physical injury" (as

opposed to “personal injury”) effectively meaningless.² Moreover, insofar as the Commission is directed to apply “applicable principles of international law” in deciding the claims before it, *see* 22 U.S.C. § 1623(a)(2) (2006), the Commission notes that the distinction between physical and mental injuries is well-established in both international conventions³ and decisions of international tribunals⁴.

Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. 509.5(b) (2010).

In summary, therefore, the Commission finds that the claimant has not met the burden of proof in this claim, in that he has not established his continuous U.S. nationality, that he was present on the scene of the incident, or satisfied the Commission standard for physical injury. As such, the Commission must conclude that this claim does not qualify for compensation under Category E of the January Referral Letter. Accordingly, this claim must be and is hereby denied.

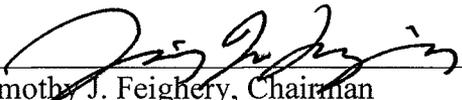
² That the term “physical injury” was intended to have a specific meaning is clear from the fact that the Referral Letter suggests that passage of the LCRA was predicated on assurances made to Congress that *physical injury* claimants would receive compensation comparable to the amount provided for *physical injuries* in the private settlement made by the Libyan government with victims of the 1986 Labelle Discotheque terrorist attack in Berlin, Germany. See December Referral Letter at pp. 1-2.

³ *See, e.g.*, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, *opened for signature* Dec. 10, 1984, S. TREATY DOC. NO. 100-20, at 3-5, 19, 1465 U.N.T.S. 85; Rome Statute of the International Criminal Court, arts. 6, 7, *opened for signature* July 17, 1998, 2187 U.N.T.S. 3; Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, *entry into force* Jan. 12, 1951, Sen. Exec. Doc. 81-O, 78 U.N.T.S. 277.

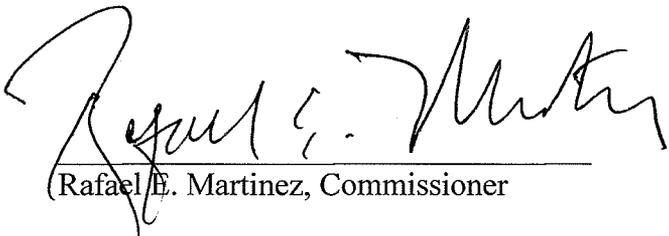
⁴ *See, e.g.*, Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Judgment and Sentence, ¶¶ 492-494 & n.454, ¶¶ 501-501 (citing, *inter alia*, Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment, ¶ 291); Prosecutor v. Krajišnik, Case No. IT-00-39-T, Judgment, ¶ 746 (citing Prosecutor v. Delalic (“The Čelebići case”), Case No. IT-96-21-A, Judgment, ¶¶ 424, 426); Prosecutor v. Bagosora, ICTR-98-41-T, Decision on Motions for Judgment of Acquittal, ¶ 34 & n.77; South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 6, 253 (July 18).

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

Dated at Washington, DC, July 12, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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

AUG 18 2011

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice 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 such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2010).