

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

In the Matter of the Claim of

ESTATE OF MICHAEL SWEIS, DECEASED;
JEANETTE SWEIS, PERSONAL REPRESENTATIVE

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} Claim No. LIB-II-176

} Decision No. LIB-II-181

Against the Great Socialist People's
Libyan Arab Jamahiriya

Counsel for Claimant:

Richard D. Heideman, Esq.
Heideman Nudelman & Kalik, P.C.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon the alleged severity of physical injuries suffered by the late Michael Sweis at Fiumicino Airport¹ in Rome, Italy on December 27, 1985.²

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

¹ Also known as Rome Leonardo da Vinci Airport or Leonardo da Vinci-Fiumicino Airport.

² Mr. Sweis died in 2003.

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”).

The present claim is made under Category D. According to the January Referral, 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 [the Department of State’s] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to our December 11, 2008 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 Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

Id. at ¶ 6. Attachment 1 to the January Referral lists the suits comprising the Pending Litigation.

The January Referral, as well as a December 11, 2008 Referral (“December Referral”) 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 (Nov. 5, 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. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

On January 12, 2010, the Commission adjudicated Mr. Sweis's claim of physical injury under the December Referral. In its claim, claimant estate asserted that Mr. Sweis suffered an "extensive" gunshot wound with "excessive drainage" to his right knee joint, as well as a wound to his scalp, caused by bullets or shrapnel from the explosion of hand grenades. The Commission concluded that the evidence submitted was sufficient to establish that the injury alleged met the Commission's standard for physical injury and, consequently, that claimant was entitled to compensation in the amount of \$3 million. *Claim of ESTATE OF MICHAEL SWEIS, DECEASED; JEANETTE SWEIS, PERSONAL REPRESENTATIVE*, Claim No. LIB-I-046, Decision No. LIB-I-036 (2010).

BASIS OF THE PRESENT CLAIM

On July 7, 2010, the Commission received from claimant estate a completed Statement of Claim in which it asserts a claim for additional compensation under Category D of the January Referral, along with exhibits supporting the elements of the claim, including evidence of the U.S. nationality of all relevant individuals, the estate's receipt of an award under the December Referral, and the extent of Mr. Sweis's injuries.

Specifically, claimant asserts that the “severe, permanent physical injury” suffered by Mr. Sweis, which caused him “permanent disability and pain,” constitutes a special circumstance warranting additional compensation under Category D. The evidence submitted includes a description of Mr. Sweis’s physical injuries and the alleged permanent effects, contemporaneous medical records, as well as newspaper clippings from the time of the attack.

DISCUSSION

As an initial matter, the Commission recalls its finding in *Claim of ESTATE OF MICHAEL SWEIS, DECEASED; JEANETTE SWEIS, PERSONAL REPRESENTATIVE*, Claim No. LIB-I-046, Decision No. LIB-I-036 (2010), that the ESTATE OF MICHAEL SWEIS, DECEASED; JEANETTE SWEIS, PERSONAL REPRESENTATIVE, was the proper claimant in that claim. For the same reasons articulated there, the Commission determined that the ESTATE OF MICHAEL SWEIS, DECEASED; JEANETTE SWEIS, PERSONAL REPRESENTATIVE, is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction under Category D of the January Referral, is limited to claims of individuals who: (1) are U.S. nationals; (2) received an award under the December Referral; and (3) have dismissed their respective Pending Litigation cases against Libya. January Referral, *supra*, ¶ 6.

Nationality

The Commission determined in its decision on Mr. Sweis’s physical injury claim under the December Referral that the claim was held by a United States national at the time of the injury that it was continuously held thereafter by the claimant’s decedent until

Mr. Sweis's death in 2003, and that it has been continuously held by U.S. nationals from that point until the effective date of the Claims Settlement Agreement. That determination applies equally to satisfy the nationality requirement here.

Award Under the December Referral

To fall within Category D of the claims referred to the Commission, the claimant must have received an award under the December Referral. As noted above, the Commission awarded the claimant estate \$3 million based on its physical injury claim under the December Referral. Accordingly, the Commission finds that claimant has satisfied this element of its claim.

Dismissal of the Pending Litigation

The January Referral also requires that the claimant provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, *supra*, ¶ 6. The Commission determined, in its decision on claimant's claim for the physical injury of Mr. Sweis under the December Referral, that the Pending Litigation in question, *Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya*, case no. 06-cv-727 and *Simpson v. Great Socialist Libyan Arab Jamahiriya*, case no. 08-cv-529, filed in the United States District Court for the District of Columbia, was dismissed through an Order of Dismissal issued on December 24, 2008. That determination applies here.

In summary, therefore, the Commission concludes, on the basis of the foregoing, that this claim is within the Commission's jurisdiction pursuant to the January Referral and is entitled to adjudication on the merits.

Merits

Category D of the January Referral requests, in pertinent part, that the Commission determine whether “the severity of the injury is a special circumstance warranting additional compensation.” In *Claim of* ^{5 U.S.C. §552(b)(6)} Claim No. LIB-II-109, Decision No. LIB-II-112 (2011), the Commission held that only the most severe injuries would constitute a special circumstance warranting additional compensation under Category D. The Commission further held that in determining which injuries are among the most severe, it would consider the nature and extent of the injury itself, the impact that the injury has had on claimant’s ability to perform major life functions and activities—both on a temporary and on a permanent basis—and the degree to which claimant’s injury has disfigured his or her outward appearance.

For each Category D claim that is before the Commission, the present claim included, claimants have been requested to provide “any and all” medical and other evidence sufficient to establish “the extent to which there is permanent scarring or disfigurement that resulted from the physical injuries suffered; and/or the extent to which the severity of the injury substantially limits one or more of the claimant’s major life activities.”

Mr. Sweis, was present at the Fiumicino Airport in Rome, Italy on December 27, 1985 with his wife and four children at the time of the terrorist attack. According to the Statement of Claim and accompanying exhibits, the decedent suffered gunshot and shrapnel wounds to his knee joint and scalp. Mr. Sweis was immediately taken to the emergency room surgery department at St. Eugenio Hospital in Rome, where records state that he was admitted for an “extensive gunshot wound on the right popliteal fossa

with excessive drainage.” “Popliteal fossa” refers to the back of the knee joint. The hospital records, translated by claimant into English, describe the surgical treatment for the injury as “[c]leansing of wound with (illegible word) suture of left popliteal fossa. (illegible word), Haemostasis. Pamet in layers front det. Suture and drainage.” Mr. Sweis was also treated with medication for issues related to his diabetes. On December 28, 1985, the day after he was admitted, he was transferred to the Centro Traumatologico Ortopedico (CTO) Hospital, also in Rome, where he stayed until his release on January 3, 1986. The CTO Hospital records of that time indicate that there were “tachyarrhythmia episodes in a diabetic patient,” and that Mr. Sweis “reported intense pain behind the sternum.” The cardiology department monitored and treated Mr. Sweis, running tests for “suspected myocardial infarction,” or heart attack. It is unclear from the records whether Mr. Sweis did in fact have a heart attack at the time.

The Statement of Claim asserts that the injuries suffered by Mr. Sweis “caused permanent disability and pain, and restricted his mobility, forcing him to walk with a cane every day of the remainder of his life.” The Statement of Claim also goes on to state that “in 2003, Michael’s leg was amputated due to his severe physical injuries and the complications they caused,” and that “Michael never recovered from the trauma of the amputation, and spent the ensuing six months in a hospital bed, in pain, immobilized, before finally dying on December, 18, 2003.”

All of these assertions, however, are unsupported by any medical evidence. Indeed, claimant has not submitted any medical records subsequent to Mr. Sweis’s discharge from the CTO Hospital on January 3, 1986. Claimant has not provided any medical records establishing Mr. Sweis’s alleged “permanent disability and pain” or his

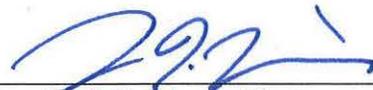
alleged "restricted...mobility." Nor has claimant provided any records of Mr. Sweis's asserted amputation, or any documentation linking the amputation to the injuries he suffered eighteen years earlier. Moreover, Mr. Sweis's death certificate lists "ischemic cardiomyopathy" and "coronary artery disease" as the causes of death.

Considering the totality of the evidence submitted, the Commission is not persuaded that the severity of the physical injuries Mr. Sweis suffered at Fiumicino Airport in December 1985 is a special circumstance so as to qualify for compensation in addition to the \$3 million claimant has already received in this program. In regard to the nature and extent of the injury, the record demonstrates that Mr. Sweis was injured in the leg from a firearm wound. The medical records mention Mr. Sweis's scalp, but there is no reference to any medical procedures to treat any injury or scar on his scalp. The record is devoid of any evidence demonstrating that Mr. Sweis's injuries impacted his major life functions. While claimant asserts, in its Statement of Claim, that Mr. Sweis was permanently disabled and suffered pain, there are no medical records to support that assertion. There is no record of any treatment or medical procedures that Mr. Sweis underwent following his initial hospitalization, or any scarring or any permanent scarring or disfigurement as a result of the injuries. Nor has claimant produced any disability rating or other determination to support its claim that Mr. Sweis was permanently disabled. Further, while claimant alleges that Mr. Sweis's leg was amputated in 2003 and that Mr. Sweis spent the six months following his amputation in a hospital bed until he died in 2003, there is no evidence of this alleged procedure and treatment at all, let alone evidence to tie it to the injuries he suffered in December 1985.

Therefore, the Commission concludes that the claimant has failed to meet its burden of proof to show that Mr. Sweis's physical injuries rise to the level of a special circumstance warranting additional compensation under Category D, beyond its award of \$3 million under the December Referral.

Accordingly, this claim must be and is hereby denied.

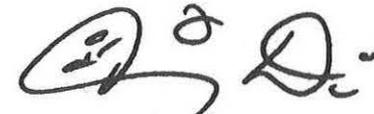
Dated at Washington, DC, June 20, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

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

August 28, 2012

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).