

**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-005
	}	
	}	Decision No. IRQ-I-001
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

FINAL DECISION

Claimant objects to the Commission’s Proposed Decision denying his claim against the Republic of Iraq (“Iraq”). He contends that the Commission made legal errors in interpreting the State Department’s letter authorizing the Commission to adjudicate claims in this program. Because we conclude that the Proposed Decision’s interpretation of the letter was in fact correct and because Claimant raises no other reason to reverse the Proposed Decision, we affirm the Proposed Decision’s conclusion that this claim be denied.

BACKGROUND

Claimant brought a claim against Iraq based on injuries he suffered as a result of being held hostage in Iraq and Kuwait between August and December 1990. The Commission denied the claim in a Proposed Decision entered on January 15, 2014. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) (“Proposed Decision”). The

Commission concluded that Claimant had not met his burden of proving that he had suffered a “serious personal injury” as contemplated in the State Department’s letter to the Commission establishing this program. *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”). That letter sets forth—and limits—the Commission’s legal authority to decide claims in this program. *See* 22 U.S.C. § 1623. The Commission concluded that the phrase “serious personal injury” as used in the Referral required Claimant to show that his injury resulted from one of the four acts enumerated in the Referral¹ or some other act of a similar type or a similar level of brutality or cruelty, *i.e.* a discrete act separate from the hostage experience itself. Because Claimant had not even alleged such an act, the Commission denied his claim.

On January 22, 2014, the Claimant filed a notice of objection and requested an oral hearing. On February 10, 2014, Claimant submitted a brief containing further evidence and argument in support of his objection, including a declaration from Robert A. Blum, M.D., a board-certified psychiatrist with extensive experience treating former hostages. The Commission held an oral hearing on February 21, 2014; the hearing consisted solely of argument by Claimant’s counsel, and the Claimant presented no witnesses for examination.

Claimant’s attorney makes two arguments in his brief, which he supplemented further during oral argument. First, he argues that the Referral “clearly and unambiguously encompasses claims for serious personal injury without any requirement

¹ As detailed in the Proposed Decision, the four acts are sexual assault, coercive interrogation, mock execution, and aggravated physical assault. *See* Proposed Decision at 6-7.

that such injury arise out of wrongful conduct separate from that of the hostage experience itself.” Under this argument, the Proposed Decision erred by requiring a discrete act as a necessary condition for a finding of “serious personal injury.” Second, he argues that the Proposed Decision erred in concluding that Claimant was fully compensated by the State Department for his injuries. He contends that this conclusion effectively ignored the word “generally” in the Referral’s indication that the State Department’s compensation “encompassed physical, mental, and emotional injuries *generally associated* with captivity or detention” (emphasis added).

DISCUSSION

I. Definition of “Serious Personal Injury”

To decide this claim requires that we first determine whether Claimant suffered a “serious personal injury” within the meaning of the 2012 Referral. By itself, the use of a phrase like “serious personal injury” might be thought to give us complete discretion to determine whether the Claimant’s personal injury is “serious.” Here, however, the State Department provided further elucidation of the phrase, and that is where we begin our analysis. The relevant sentence in the Referral—which we will refer to as the “explanatory sentence”—provides that “For 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.”

We begin by noting that the explanatory sentence must have some meaning; it must have some effect on our determinations of whether an injury is “serious” for

purposes of the Referral. Therefore, to determine the meaning of “serious personal injury” requires that we understand and interpret that sentence.

The Proposed Decision understood the explanatory sentence as helping to define the contours of the meaning of the phrase “serious personal injury.” In particular, the Proposed Decision explained that the permissive nature of the phrase “*may include*” implied that the list in the explanatory sentence was not to be treated as exclusive. At the same time, the Proposed Decision noted that the explanatory sentence did not reference types of *injuries*, but instead listed types of *acts* that could cause injury. This approach to describing injuries suggests that determining whether an injury is “serious” for purposes of the Referral requires some consideration of the act that caused the injury. It was against this backdrop that the Proposed Decision concluded that, to be a “serious personal injury,” the injury had to have resulted from one of the four acts specifically enumerated in the Referral or some other act of a similar type or similar level of brutality or cruelty. Claimant’s arguments must thus be seen through the lens of language that on the one hand is permissive while on the other hand has the distinctive feature of connecting the “serious” nature of an injury to particular acts.

Claimant’s primary argument is textual: the Referral, he says, “clearly and unambiguously encompasses claims for serious personal injury without any requirement that such injury arise out of wrongful conduct separate from that of the hostage experience itself.” He contends that the Commission’s reading of the Referral “disregards the natural and ordinary meaning” of its terms and is contrary to “elementary principles of construction that have guided the Commission’s decisions in the past.” Claimant argues that the language “*may include*” in the explanatory sentence is “clear

and unambiguous” in providing no limitation of any kind and that the Proposed Decision erred in reading it as doing so. Much of Claimant’s brief focuses on explaining that “the word ‘include’ should not be construed as a word of limitation, the equivalent of ‘include only.’” Rather than connoting “limitation,” he says, the term “include” must be treated as one of “extension or enlargement.”

The problem with this argument is twofold. First, the Proposed Decision specifically held that “serious personal injuries” would not be limited to the four acts enumerated in the explanatory sentence. We thus explicitly interpreted “include” as a word of “extension or enlargement” and not as the equivalent of “include only.” Second, it was not the words “may include” that led the Proposed Decision to require a discrete act as a condition of a finding that an injury was serious. It was the fact that the explanatory sentence tied the phrase “serious personal injury” to discrete acts.² The question then is not “limitation” versus “enlargement” vis-à-vis injuries caused by the four acts listed in the explanatory sentence, since both the Proposed Decision’s reading and Claimant’s interpretation treat “include” as a term of “enlargement.” The question is simply how much “enlargement” and of what type. To answer that question, the plain meaning of the term “include” provides no help. What the Proposed Decision did find important was the Referral’s reference to specific acts that cause injuries, and we continue to see the reference to acts as the linchpin of the explanatory sentence’s meaning. The one thing that the language strongly implies is that we must “consider not

² The Referral says the category of claims “*shall* consist of claims . . . for serious personal injuries . . .” (emphasis added). Claimant uses that language to argue that the word “shall” allows “no discretion to find that personal injuries meeting the ‘serious’ threshold do not fall within the ambit of the Referral.” The problem with this argument is that while the word “shall” is mandatory, that still leaves unanswered the question of what constitutes a “serious personal injury” under the Referral.

just the injury itself, but how the injury arose[]”³ in determining whether an injury is a “serious personal injury” within the Referral’s meaning.

Claimant has two responses: first, the explanatory sentence is there to give the Commission a minimum or baseline, rather than a general sense of the type of acts that could cause “serious personal injuries”; and second, even if there must be a discrete act, the hostage-taking itself can count as the discrete act. Claimant’s first response, made at the oral hearing, was that the explanatory sentence was there to indicate the “kinds of circumstances in which the ‘serious personal injury’ requirement would almost *per se* be satisfied as a result of the individual having suffered that act.” In our view, this reading is less plausible than the approach we took in the Proposed Decision. Each of the acts enumerated in the explanatory sentence evokes an extremely high level of brutality and culpability. If, as Claimant contends, we were given free rein to decide in each and every case whether there is a “serious personal injury,” it seems highly unlikely that the State Department would have listed these four acts, which seem like easy cases for showing that an injury is “serious.” Rather, it seems more likely that there was some sense in which the State Department meant to imply the broad principle of *ejusdem generis*, as if to say, “when we say ‘serious personal injury,’ look at the acts that cause injury, and these are examples of the type of acts that are bad enough to lead to a serious personal injury.”

Claimant’s second response is that the hostage-taking itself can count as the act that causes the serious personal injury. He says, “the fact that a serious personal injury ‘may include’ injury arising from certain types of acts that are separate and distinct from

³ Proposed Decision at 7.

the act of hostage-taking does not mean that it ‘cannot include’ injury arising from the hostage-taking itself.” This argument raises precisely the question posed by the facts of this claim. Here, Claimant’s injuries arose solely from his having been a hostage. Indeed, Claimant’s injuries occurred in circumstances in which he was never even under the direct custody of Iraqi officials; he was a hostage solely due to Iraq’s restrictions on U.S. nationals leaving Kuwait and Iraq.

In the specific context of this program, this argument has to be wrong. The Referral limits this program to those who have already received compensation from the State Department “for his or her claim of hostage-taking” Clearly, then, *every* potential claimant was the victim of hostage-taking. Thus, under Claimant’s reading, every claimant falling within the jurisdictional terms of the Referral would have been the victim of a relevant act within the meaning of the explanatory sentence, rendering the sentence’s reference to specific acts superfluous.

Claimant further argues that the State Department could have written the Referral to say precisely what the Commission held in its Proposed Decision—that serious personal injuries must result from one of the four acts or one of a similar type or severity—but it did not. The problem with this argument is that, while such “negative implication” arguments can be valid in some circumstances, *see generally* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 107-111 (2013), a similar argument can be made as to any of Claimant’s own preferred interpretations. For example, Claimant’s argument that the explanatory sentence is merely an indication of those circumstances “in which the ‘serious personal injury’ requirement would almost per se be satisfied” has the same problem. Rather than

“may include,” the Referral could have said “includes at least” or “necessarily includes.” Similarly, Claimant’s argument that hostage-taking itself can be the discrete act suffers from an even stronger negative-implication argument: in the context of a program specifically designed for hostages, the explanatory sentence does not include hostage-taking in its list of acts that can cause a “serious personal injury.”

Finally, our interpretation of the phrase “serious personal injury” is supported by the way the United Nations Compensation Commission (“UNCC”) used the same phrase. As in this program, the UNCC addressed claims arising out of Iraq’s occupation of Kuwait in 1990-91, and the State Department was likely aware of the UNCC’s use of that phrase. The UNCC’s Governing Council held that

1. “Serious personal injury” means:
 - (a) Dismemberment;
 - (b) Permanent or temporary significant disfigurement, such as substantial change in one’s outward appearance;
 - (c) Permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;
 - (d) Any injury which, if left untreated, is unlikely to result in the full recovery of the injured body area, or is likely to prolong such recovery.
2. For purposes of recovery before the Compensation Commission, “serious personal injury” also includes instances of physical or mental injury arising from sexual assault, torture, aggravated physical assault, hostage-taking or illegal detention for more than three days or being forced to hide for more than three days on account of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained.

Decision Taken by the Governing Council of the United Nations Compensation Commission During its Second Session, at the 15th Meeting, Held on 18 October 1991, S/AC.26/1991/3, at 2 (Oct. 23, 1991).

Significantly, the 2012 Referral’s explanatory sentence closely tracks the language in paragraph 2 of the UNCC’s decision, and yet at the same time has differences

with that language. This further buttresses our conclusion by creating negative implications about the meaning of the explanatory sentence in two distinct ways. First, the explanatory sentence, like paragraph 2 but unlike paragraph 1 of the UNCC's definition, lists acts not injuries. The absence of any language listing any specific injuries in the Referral's explanatory sentence suggests that our focus should be on acts not injuries—indeed, it suggests that injuries unconnected to specific acts may have been consciously omitted from the Referral. Moreover, the Referral's requirement that the Commission separately consider whether the “severity” of the injury “constitutes a special circumstance warranting additional compensation” also suggests that the level (i.e., severity) of the injury alone is not what the State Department wanted us to consider determinative of whether an injury satisfies the “serious personal injury” requirement. Second, paragraph 2 of the UNCC definition specifically lists hostage-taking, whereas the Referral's explanatory sentence does not. This suggests that hostage-taking may have been consciously excluded from the list of acts in the explanatory sentence and that any injuries caused solely by hostage-taking thus cannot be “serious personal injuries” within the meaning of the Referral. Of course, even if the State Department were unaware of the UNCC's definition, we could still make these negative inferences from the text; but given the remarkable similarities in the language and the fact that the UNCC adjudicated claims out of the same basic factual circumstances, the State Department was likely aware of the UNCC's definition, making the inferences even stronger here.

II. Injuries “Generally Associated” with Hostage-Taking or Unlawful Detention

Claimant's second argument is that the Proposed Decision erred by concluding that the State Department payment Claimant has already received—\$800,000—fully

compensated him for his injuries. He focuses on the word “generally” in the language in footnote 3 of the Referral, which indicates that the State Department compensation “encompassed physical, mental, and emotional injuries *generally* associated with such captivity or detention” (emphasis added). He argues that the Proposed Decision “ignores the ordinary meaning of the word ‘generally’ and indeed, reads the word completely out of The Referral.” Claimant supplements his legal argument with a declaration from Robert A. Blum, a board-certified psychiatrist with extensive experience treating victims of international hostage-taking, who opines that Claimant’s injuries are so unusual that they cannot be said to be “*generally* associated with” being a hostage.

This argument has two types of problems: textual and practical. The textual problem is that this footnote is not the operative language of the Referral; it is merely a description of the harm for which the State Department has already compensated claimants. So, even if Claimant has not been compensated for injuries that are not “generally associated with” hostage-taking (an issue on which we make no finding), that does not mean he is entitled to compensation in this program. The legal question remains simply whether he suffered a “serious personal injury” within the meaning of the Referral. To the extent that the Proposed Decision could be read to say that footnote 3 provides a basis for compensation separate and distinct from the meaning of “serious personal injury”—and it might plausibly have been read as such, *see* Proposed Decision at 12—we now make clear that it does not: footnote 3 simply lends further support to our interpretation of the phrase “serious personal injury.”

This is not to say that we accept Claimant’s reading of “generally associated with” in footnote 3. Rather, the better reading of footnote 3 is that it refers to the *type* of

injuries, rather than (as Claimant would have it) the level of severity of injuries, that are “generally associated with” having been held hostage. While the text is not crystal clear on this point, the practical implications of the two different readings make this the more likely meaning.

Accepting Claimant’s argument would make this claims program nearly impossible to administer. Rather than focusing on how an injury was sustained, Claimant’s approach would require the Commission to undertake a case-by-case analysis to determine whether a given claimant’s injuries (including emotional injuries) were sufficiently unusual compared to those “generally associated with” the hostage experience. The task would be made even more difficult by the fact that claimants in this program experienced widely varying circumstances of captivity. For example, are the emotional injuries “generally associated” with captivity for three days different from those “generally associated” with captivity for three months? Or, is there a difference between the emotional injuries “generally associated with” being trapped in the U.S. Embassy and those “generally associated with” being held by Iraqi forces in a hotel?

Claimant’s own situation raises just these sorts of issues. He claims to have suffered particularly severe emotional injuries, and yet, in contrast to many of the claimants in this program, he was never directly in the custody of the Iraqi authorities (although he was of course trapped against his will within the borders of Iraq and Kuwait). Moreover, of the emotional injuries he claims to have suffered, among the most severe was Post-Traumatic Stress Disorder (“PTSD”) and yet, by Claimant’s own argument, some types (or levels) of PTSD are generally associated with a hostage-taking experience and so other hostages who suffered a diagnosis of PTSD would not

necessarily be eligible for compensation. In his own case, Claimant asserts that the severity of his PTSD was “extraordinary and exceedingly rare[,]” and not the less severe mental injuries suffered by all of the hostages, who he claims suffered “a certain degree of post-release psychological distress that is a typical byproduct of the hostage experience” Claimant’s reading of footnote 3—even if it were directly relevant to the meaning of the phrase “serious personal injury”—would have this Commission do an individualized determination of how “serious” every claimant’s PTSD was. The language of the Referral does not have to be read to require the Commission to undertake such an unworkable analysis, and we see nothing in the Referral to suggest the State Department wanted us to do so.

CONCLUSION

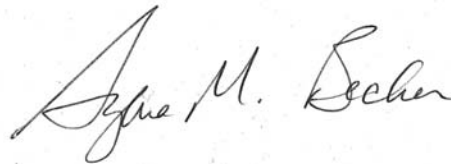
During the latter part of 1990, Iraq prevented U.S. nationals in Iraq and Kuwait from leaving those countries. Claimant was one of those hostages, and the Commission has no reason to doubt that he suffered enormous mental and emotional injuries because of it. This Commission’s authority to award compensation, however, comes from the State Department and the terms of its Referral. That Referral gives elucidation to the term “serious personal injuries,” and once more, as in the Proposed Decision, we conclude that the phrase is limited to injuries arising from at least one of the four acts specifically mentioned in the Referral (sexual assault, coercive interrogation, mock execution, or aggravated physical assault) or a discrete act, separate from the hostage experience itself, that is comparable to one of those four acts—that is, an injury must have arisen out of an act or acts of a similar type or that rise to a similar level of brutality or cruelty as the four enumerated acts.

In sum, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the Commission concludes that the Claimant has not met his burden of proving that he has satisfied the requirement in the Referral that he have suffered a “serious personal injury.” Accordingly, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed. This constitutes the Commission’s final determination in this claim.

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

A handwritten signature in black ink, appearing to read "Anuj C. Desai". The signature is fluid and cursive, with a large initial "A" and "D".

Anuj C. Desai, Commissioner

A handwritten signature in black ink, appearing to read "Sylvia M. Becker". The signature is cursive, with a large initial "S" and "B".

Sylvia M. Becker, Commissioner

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Counsel for Claimant:	Daniel Wolf, Esq. Law Offices of Daniel Wolf
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PROPOSED DECISION

Claimant⁵_{U.S.C. §552(b)(6)} brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered as a result of being held hostage in Iraq and Kuwait between August and December 1990. The United States Department of State has already provided a payment to Claimant, a payment that compensated him for his experience as a hostage and encompassed the physical, mental, and emotional injuries generally associated with having been a hostage. He now seeks additional compensation based on a claim that he suffered “serious personal injuries” and that the severity of those injuries constitutes a special circumstance warranting additional compensation. In support of his claim, Claimant alleges that his captivity caused him to suffer various mental and emotional injuries, including post-traumatic stress disorder (“PTSD”), anxiety, and depression, and that these injuries have left him disabled and unable to work. Although we are sympathetic to all that Claimant endured as a result of his hostage experience, Claimant

has failed to show that he is entitled to additional compensation beyond that which the State Department has already provided him. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that he was serving as a naval liaison for the U.S. Embassy in Kuwait when Iraq attacked Kuwait in August 1990. He claims that Iraq effectively held him hostage until December of that year, first for three weeks in the U.S. Embassy in Kuwait and for the rest of the time in Baghdad, either in the U.S. Embassy there or in an adjacent residence. Claimant's experiences and injuries are detailed in the Merits section below. Key to his claim is that throughout his ordeal he lived in constant fear that Iraqi authorities would storm his position and that, if so, he would be killed, wounded, tortured, brutalized, or forced to serve as a human shield.

Claimant then 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 (\$800,000 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

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.

of serious physical, mental, or emotional injury arising from sexual 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.” The definition of “U.S. nationals” here is more complicated than it might at first appear. Under the International Claims Settlement Act, Congress directed this Commission to apply the following law in the following order when deciding claims: “(A) [t]he provisions of the applicable claims agreement”; and “(B) [t]he applicable principles of international law, justice, and equity.” 22 U.S.C. § 1623(a)(2).

Here, the Commission must thus first turn to the Claims Settlement Agreement, and that Agreement specifically provides a definition of “U.S. nationals.” Article I of the Agreement states that “[r]eference to ‘U.S. nationals’ shall mean natural and juridical persons who were U.S. nationals at the time their claim arose and through the date of entry into force of this agreement.” Claims Settlement Agreement, *supra*, art. I(2). The U.S. nationality requirement thus 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.

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 May 1987 to May 1992) and his current one (valid from June 2013 to June 2023).

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 19, 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 November 23, 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.” If the Referral used the phrase “serious personal injury” without any elucidation, it might imply that we need solely determine how bad a claimant’s injury is—that is, to focus solely on the injury itself. But the Referral expressly lists four specific acts from which such injury may arise, strongly implying that, in determining whether a particular injury satisfies the legal standard of a “serious personal injury,” we must consider not just the injury itself, but also how the injury arose. It is clear, for example, that the Referral’s phrase “serious personal injury” includes injuries arising from any of the four acts specifically mentioned—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault. At the same time, the use of the permissive “may” in the same sentence suggests that an injury need not necessarily arise from one of those four acts to be deemed a “serious” personal injury. Rather, the language of the Referral suggests that an injury must be caused by a discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, that an injury must arise out of an act or acts of a similar type or that rise to a similar level of brutality or cruelty as the four enumerated acts.

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, it must be proven 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 determining whether the severity of the injury is such a “special circumstance,” 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.

Here, even assuming all the facts Claimant alleges to be true, Claimant has not proven that he 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 though he no doubt suffered tremendously, he cannot recover under this program because his injuries did not arise

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 10, 2007, and June 21, 2013, in which he describes his hostage experience and his alleged serious personal injuries; a copy of his January 25, 2012 VA disability Rating Decision; a printout of his VA medical records containing physician notes from April 2013; a copy of his 2010 Social Security statement; and a copy of his 2011 federal tax returns. 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.

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

Kuwait City: Claimant alleges that he served as a naval liaison at the U.S. Embassy in Kuwait City and was staying at a hotel when Iraq invaded Kuwait on August 2, 1990. He states that, when he heard about the invasion, he went to the U.S. Embassy compound, and that shortly thereafter, “an intense battle broke out between Iraqi and Kuwait units just outside the compound.” He adds that “[s]tray rounds were coming into the Embassy on a regular basis.” Claimant describes how, during the first few days, he helped set up communications systems in the embassy, got very little sleep, and “was working practically around the clock” He explains how he then remained confined to the embassy for the next three weeks and how, while there, he “lived in a state of constant anxiety and fear, knowing that the compound could be stormed by Iraqi security forces at any moment and that [he] would be killed, wounded, brutalized, or forced to serve as a human shield if that happened.” Claimant asserts that the embassy was severely overcrowded: he had to sleep on the floor, and the “food was carefully rationed.” The overcrowding was corroborated by another person detained in the embassy compound who said that there were “about 150 people—including many families—staying there, and it was difficult to move around the compound because of the crowding.”

Claimant describes particular events that heightened the tension inside the embassy. For instance, on one occasion, an Iraqi tank destroyed a Kuwaiti tank right outside the embassy compound. On another occasion, the “Kuwait resistance launched an attack on the Embassy guard tower, which was being manned by Iraqi troops.”

Claimant further notes that the embassy compound was “extremely vulnerable to snipers on the roof” of the adjacent hotel, and that he had to be aware of this when he moved about the compound, seeking cover from trees and buildings when possible.

Travel from Kuwait to Baghdad: Claimant alleges that, after three weeks inside the embassy compound, he traveled with a diplomatic convoy to Baghdad: he says that Iraqi authorities had assured them that, upon arrival in Baghdad, they would be permitted to leave Iraq. Claimant states that when they arrived at the border, they were told to wait, and “were exposed to the scorching desert sun for three stress-ridden hours.” Two other individuals described the 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 likewise says this was consistent with his recollection of the experience.

Baghdad: Claimant states that after they arrived in Baghdad, he and the other members of the convoy learned that all of the adult male members of the convoy would—contrary to the Iraqi authorities’ previous assurances—not be permitted to leave Iraq. As a result, Claimant was confined to the U.S. Embassy in Baghdad and an adjacent residence for three more months. He asserts that during this time, he feared being “killed, tortured, or forced to serve as a ‘human shield’ at a strategic site,” though none of these things ever happened to him. He further asserts that he “suffered from depression, insomnia, and powerful sensations of helplessness, anger, and dread.” On December 9, 1990, Claimant and the other Americans held at the embassy compound were released and permitted to leave the country.

Injuries Alleged: Claimant states that he began to experience the psychological effects of the situation in Kuwait itself. He states that, “[p]rior to my captivity, I never smoked, but the anxiety and stress was so great that I turned to cigarettes to calm my nerves. Unfortunately, I have subsequently been unable to quit smoking to this day.” Claimant further alleges that his condition only got worse after his release: he states that he suffered numerous mental and emotional conditions resulting from his captivity, including “anxiety, concentration problems, paranoia and irrational fears, irritability, and unexplained bouts of anger and panic episodes whenever [he] found [him]self in the midst of a large crowd.” He further contends that this led him to develop a drinking problem (although he asserts that he stopped drinking in 2004). Claimant states that he continues to suffer from these conditions even now and that they have in fact “magnified in their intensity” over the last few years.

Claimant asserts that his mental and emotional injuries have hurt his career prospects: since he is unable to focus, he says he cannot get a promotion or complete a college degree (he enrolled in college, but later withdrew without getting his Associate’s Degree). He also indicates that he visited a Department of Veterans Affairs (“VA”) hospital in 2010, where he was diagnosed with PTSD. The following year, he filed a disability claim, which the VA ultimately granted on the basis of his PTSD. According to Claimant, the VA attributed his PTSD to his hostage experience in Iraq and Kuwait, and rated his disability at 100 percent. Claimant describes how over the past three years, he has received “more or less continuous psycho-therapeutic treatment” and has taken prescription medication for depression and insomnia. He contends that, since being laid

off his job in May 2010, he has been unable to work and has earned “virtually no income from employment.”

Analysis: Claimant argues that his injuries qualify as “serious personal injuries” and are severe enough to constitute a “special circumstance warranting additional compensation” through this program, beyond that already provided by the State Department. He has not, however, alleged facts sufficient to satisfy the legal standard to make out a “serious personal injury” under the Referral. Claimant does not dispute that his injuries arose from his captivity as a hostage. Other than the hostage-taking itself, Claimant does not allege any discrete or specific act or acts that Iraq committed to cause his injuries. Rather, Claimant contends that injuries that arose solely from the hostage experience itself can warrant compensation through this program as long as the injuries substantially interfere with the ability to perform major life functions and/or to experience the normal enjoyments of life over an extended period of time.

The language of the 2012 Referral requires us to reject this argument. First, the Referral states that “[t]he 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.” 2012 Referral, *supra*, n.3. In Claimant’s case, this refers to the \$800,000 payment the State Department has already provided him. Second, the Referral’s specific explanation of the meaning of the phrase “serious personal injury” undermines Claimant’s argument: the phrase is limited to injuries arising out of one of

the four enumerated acts⁴ or some other act of a similar type or a similar level of brutality or cruelty. Because Claimant alleges no such act here, his claim must be denied.

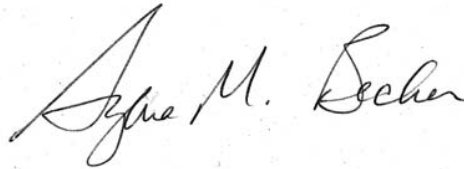
In sum, after carefully considering all of Claimant's evidence, the Commission concludes that the injuries alleged by Claimant do not constitute a "serious personal injury" within the meaning of the 2012 Referral. Although we sympathize with all that Claimant has experienced both during and since his captivity in Iraq and Kuwait, the terms of the 2012 Referral constrain the Commission to interpret the phrase "serious personal injury" in such a way that Claimant's injuries do not satisfy the Referral's meaning of that phrase.

Accordingly,^{5 U.S.C. §552(b)(6)} claim must be and is hereby denied.

Dated at Washington, DC, January 15, 2014
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner



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).

⁴ Again, the four acts are sexual assault, coercive interrogation, mock execution, and aggravated physical assault.