

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-107

Decision No. LIB-II-074

Counsel for Claimant:

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Joshua M. Ambush, LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based upon physical injuries said to have been sustained by^{5 U.S.C. §552(b)(6)} at Lod Airport in Tel Aviv, Israel on May 30, 1972.

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

BASIS OF THE PRESENT CLAIM

On June 22, 2010, the Commission received from claimant a completed Statement of Claim in which he asserts a claim under Category E of the January Referral Letter, along with exhibits supporting the elements of his claim. This submission included evidence of claimant's U.S. nationality, his presence at the scene of the terrorist incident, and his alleged physical injuries for which he now claims compensation.

The claimant states that he was present in the terminal at Lod Airport in Tel Aviv, Israel on May 30, 1972, when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. According to the Statement of Claim and accompanying exhibits, claimant suffered a laceration to his right thigh and shrapnel wounds to his neck as a result of the attack. He states that, immediately following the incident, he was taken to a local hospital, where he underwent emergency surgery and remained hospitalized for ten days.

Claimant alleges that bullet or shrapnel fragments remain in his neck to this day, resulting in continual pain and "limited range of motion in his neck and shoulder region."

In addition, he states that he continues to experience severe pain in his right thigh, suffers from frequent headaches, and is “[u]nable to sit or stand for extended periods of time[.]”

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited to the category of claims defined under the January Referral Letter; in this case, Category E, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral Letter, *supra* ¶ 7.

Nationality

In the *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. To meet this requirement, the claimant has provided a copy of his birth certificate, indicating that he was born in Luquillo, Puerto Rico, and a copy of his current U.S. passport. Based on this evidence, the Commission determines that the claim was owned by a U.S. national at the time of the incident continuously through the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral Letter. January Referral Letter, *supra*, ¶ 7. This list includes the “May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.” *Id.*, Attachment 2, ¶ 1. In addition, in his Statement of Claim the claimant sets forth a claim for physical injury suffered as a result of the May 30, 1972 Lod Airport terrorist attack. The Commission therefore finds that the claimant has satisfied this element of his claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Franqui* case. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which establishes that he was not a party to that litigation. In addition, claimant has averred under oath in his Statement of Claim that he was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has also satisfied this element of his claim.

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 Letter and is entitled to adjudication on the merits.

Merits

Standard for Physical Injury

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet “the standard for physical injury or wrongful death, as appropriate, adopted by the Commission” for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of* ^{5 U.S.C. §552(b)(6)}

Claim No. LIB-II-039, Dec. No. LIB-II-015 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. at 6-7. The present Category E claim must likewise meet this standard to be compensable.

Physical Injury

According to the Statement of Claim and accompanying exhibits, claimant suffered physical injuries on May 30, 1972 when terrorists opened fire and tossed hand grenades at people gathered in the terminal at Lod Airport in Tel Aviv, Israel. In a brief filed with his claim, claimant avers that he suffered “a large laceration in his right thigh and shrapnel wounds in his neck” He further avers that he was “rushed to the Tel Hashomer/Haim Sheba Medical Center” and “was immediately taken to surgery where he was operated on to excise . . . and to suture his wounds.” He alleges that he remained

hospitalized in Israel “for nearly two weeks thereafter[,]” and following his release and return to Puerto Rico, “required a second surgery for his injuries in October of 1972 . . .” According to the claimant, however, “that surgery failed to remove the remaining shrapnel in his neck.”

In support of his claim, claimant has provided, *inter alia*, medical records, including contemporaneous medical records; an affidavit from claimant describing the incident and his physical injuries; copies of newspaper articles identifying claimant as one of those wounded in the attack; a copy of a photograph purporting to depict claimant’s presence at the hospital in Israel after the attack, and more recent photographs depicting the scarring that resulted from his alleged physical injuries; a copy of a program from a June 1972 memorial service held in Puerto Rico in memory of the Lod Airport attack, which lists claimant as among those wounded; and a copy of a check issued to the claimant by the Israeli National Social Security Institute in 2005.

The contemporaneous medical records provided with this claim indicate that, following the attack, the claimant was admitted to Haim Sheba Medical Center at Tel Hashomer, where it was determined that claimant had suffered “a big laceration in his thigh” and a shrapnel wound to his neck. The records further indicate that, “in general anesthesia[,]” claimant underwent surgery consisting of the “excision of the laceration up to the fascia . . . with primary suture.” The records also note that the “[s]utures have to be removed in three days[,]” and include a notation that, upon discharge, claimant would “[]continue the[]treatment in his country.” Finally, the records indicate that claimant was discharged on June 9, 1972, having been hospitalized at Tel Hashomer for ten days.

Claimant has not provided any records of further treatment upon his return to Puerto Rico in 1972;¹ however, more recent medical records confirm the nature and extent of his physical injuries. For example, a 1994 medical report indicates that the claimant has “bullet fragments lodged in [his] neck.” In addition, a report of a 2010 medical examination notes the existence of “a small scar in the Left lateral region of the neck” and “an approximately 6 inch deformed, avulsed scar . . . in the anterior portion of his thigh,” which was described as “fibrous and is tender to deep palpation.”² The examining physician noted that the latter wound “is compatible with the bullet wound as well as with the surgical interventions and complications he suffered in said wound.” An x-ray taken in the days following the 2010 examination also revealed a “metallic foreign body overlying the posterolateral and towards the left side of the C4 cervical vertebra.”

Based on the evidence submitted, and in particular the contemporaneous medical records, the Commission finds that the claimant’s injuries meet the standard for physical injury set forth above. Accordingly, claimant ^{5 U.S.C. §552(b)(6)} is entitled to compensation as set forth below.

COMPENSATION

In the *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, the Commission held that \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission’s standard under Category E, and that compensable physical injury claims in this claims program are not entitled to interest as part of the awards granted therein. Accordingly, the Commission determines that the claimant, ^{5 U.S.C. §552(b)(6)}, is

¹ Claimant included, as an attached exhibit, a translated copy of a letter from Hospital HIMA San Pablo of Fajardo, Puerto Rico stating that no medical records pertaining to claimant could be found.

² Claimant provided photographs of the scars on his neck and thigh, which the examining physician explained, in authenticating affidavits, were consistent with treatment for bullet and shrapnel wounds.

entitled herein to an award of \$3,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant 5 U.S.C. §552(b)(6) is entitled to an award in the amount of Three Million Dollars (\$3,000,000.00).

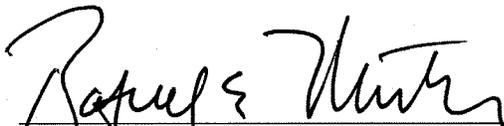
Dated at Washington, DC, July 29, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman

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

SEP 08 2011



Rafael E. Martinez, Commissioner

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).