

resulted in any significant injury or required any medical treatment beyond minor cleaning. The Commission further noted the lack of evidence concerning claimant's alleged hospitalization and the absence of any medical records prior to 2010.

On June 13, 2012, the claimant filed a notice of objection and requested an oral hearing. On August 23, 2012, claimant submitted an objection brief containing further evidence and argument in support of her objection. The Commission held an oral hearing on September 13, 2012.

In her objection brief and during the oral hearing, claimant argued that she had, in fact, suffered a physical injury in the Lod Airport attack that was severe enough to meet the Commission's standard. In particular, claimant argued that, contrary to the Commission's conclusion, the x-ray images and photographs submitted indicate that she suffered "non-superficial" shrapnel injuries, and that, given the size of the shrapnel fragments lodged in her body, it is unlikely that her injuries required only "minor cleaning." Claimant also noted, as she did in an earlier submission, that her name appears on a list of the wounded from the Israel National Archives, and that a 1974 newspaper article discussing claimant's experience corroborates the fact of her injury.

DISCUSSION

In its Proposed Decision in this claim, the Commission determined that, although the evidence established that shrapnel fragments remained in claimant's left cheek, jaw, and ankle, it was not clear, given the evidence as a whole, that claimant suffered a non-superficial physical injury during the Lod Airport attack. Significantly, the Commission noted that claimant had provided no medical records of any kind from the period between 1972 and 2010. Indeed, the only contemporaneous record of any kind submitted with this

claim was the 1974 newspaper article, which reported that claimant “was slightly wounded by a bullet and grenade fragment.” The Commission noted in the Proposed Decision that claimant’s name appeared on an undated list of wounded individuals said to be from the Israel National Archives; however, the list contained no specific information concerning the injuries sustained or to any treatment provided, if any, to those individuals.

In support of her objection, claimant submitted: her own supplemental affidavit, briefly describing her experience at the hospital after the attack; an additional color photograph of the alleged shrapnel scarring on her left cheek, accompanied by an authenticating affidavit; and a resubmission of the color photographs of claimant’s face and left ankle. The supplemental affidavit sheds some light on the treatment claimant is said to have received following the incident. In the affidavit, claimant states that she “had to stay in that hospital overnight[,]” and that she “was released at approximately noon the next day.”

The residual effects of claimant’s injuries are clear from the evidence presented. As noted in the Commission’s Proposed Decision, two metallic fragments are embedded in the left side of claimant’s face. A 2011 medical report by Alberto Folch, M.D. describes one of these “soft tissue shrapnel foreign bodies” as a 6 mm foreign body in claimant’s left mandible. In the report of a separate, 2010 medical examination by Boyd H. Collazo, M.D., this was described as a “large fragment imbedded in the left masseter muscle of her left mandible, behind the facial artery and facial nerve” The report notes that “[b]oth of these foreign objects are tender to deep palpation.” Further, Dr. Folch notes that claimant “would not have been and is not a candidate for surgery in her

mandible area because the foreign object is too close to the 7th pair nerve or the left facial nerve . . . and there would be a high risk of facial paralysis. Additionally, there would be a high amount of facial scarring resulting from such surgery.” The Commission notes that both shrapnel fragments are clearly visible in the x-ray images submitted in support of this claim.

Dr. Folch’s report also makes reference to a “1.2 cm anterior metallic soft tissue shrapnel fragment” located in “the dorsal aspect of [claimant’s] left foot.” He noted that, during the physical examination, “the left lower extremity demonstrated tenderness of the dorsal aspect of the left foot. There was painful deep palpation. I also noted that [claimant] suffered from a mild limp on her left foot, which she tries to hide. She demonstrated discomfort upon flexion and extension of her left foot . . . [and] informed me that her left foot has caused her pain since the attack.” Dr. Collazo made similar observations, noting that claimant “protects [her] left foot as she walks, and rests her left foot over her right foot when she sits. She tries to hide a mild limp.” As with the shrapnel in claimant’s face, the fragment in claimant’s left foot appears clearly in the x-ray images provided with this claim.

Considering the totality of the evidence submitted (in particular the recent medical reports and accompanying images), as well as the Commission’s disposition of similar claims in this program,^{*} the Commission finds that claimant’s shrapnel injuries meet the standard for physical injury set forth in the Proposed Decision. Accordingly, claimant ⁵ U.S.C. § 552(b)(6) is entitled to compensation as set forth below.

^{*} See Claim No. LIB-II-091, Decision No. LIB-II-054 (2011); Claim No. LIB-II-100, Decision No. LIB-II-070 (2011).

COMPENSATION

In *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 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 accordingly withdraws the denial in its Proposed Decision in this claim, and 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).

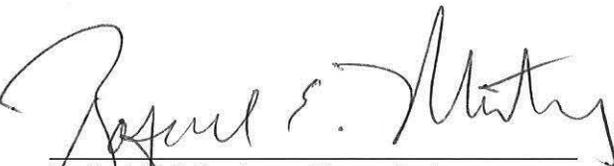
AWARD

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, October 26, 2012
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

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-153

Decision No. LIB-II-158

Counsel for Claimant:

Joshua M. Ambush, Esq.
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").

The present claim is made under Category E. According to the January Referral, 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 lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral, as well as a December 11, 2008 referral letter ("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 ICOSA and the January Referral. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On July 2, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts a claim under Category E of the January Referral, along with exhibits supporting the elements of her claim, including evidence of claimant's U.S. nationality, her presence at the scene of the terrorist incident, and her alleged physical injuries for which she now claims compensation.

The claimant states that she 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. She alleges that, as a result of the attack, she suffered multiple shrapnel wounds to her face and left foot, as well as a bullet wound to her left cheek. According to claimant, she was taken to a local hospital immediately following the incident, where doctors "stopped most of the bleeding[,]” removed shrapnel fragments from her face, and performed unspecified surgery on her left heel. She further states that she and her family remained in Israel for an unspecified period of time before returning home to Puerto Rico.

Claimant alleges that grenade shrapnel remains in her face to the present day, causing her continued pain, including “being unable to rest or sleep on the left side of her face because it causes pain and discomfort.” She also states that she “has not been able to wear high heels or shoes with straps because the fragment in her left foot still hurts.” Finally, she asserts that “[s]ince the attack she has had a constant humming or tinnitus in both ears and has episodes of vertigo[,]” and has been diagnosed with post-traumatic stress disorder resulting from the incident.

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; namely, 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 against Libya. January Referral, *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 copies of her Puerto Rico birth certificate, a 2010 Puerto Rico voter identification card, and her 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 and has been so held until the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within Category E of the January Referral, 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. January Referral, *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 her 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 her claim.

Pending Litigation

Finally, Category E of the January Referral states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral, *supra*, ¶ 7. Attachment 2 to the January Referral 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 she was not a party to that litigation. In addition, claimant has averred under oath in her Statement of Claim that she 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 her 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 and is entitled to adjudication on the merits.

Merits

Standard for Physical Injury

As stated in the January Referral, 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, *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 her Statement of Claim and accompanying exhibits, claimant, who was five months pregnant at the time of the incident, was standing near the baggage carousels at Lod Airport with her two-year old daughter when terrorists opened fire and tossed hand grenades at the crowd gathered in the baggage claim area. Claimant states

that she “threw her daughter . . . to the floor and threw herself on top of her to protect her.” She further states that she “felt an explosion go off very close to her and she felt a burning, painful sensation all over her face and head[,]” and that she “began to bleed profusely.” Claimant alleges that she then looked up and “saw a big man running towards her” who leapt on top of them. She claims that she “felt the impact of many bullets hitting the man and she also felt another wound on her left foot.” According to claimant, when the shooting stopped, “people pulled them to their feet and took them outside[,]” and she was then taken to an unidentified hospital.

Claimant asserts that, once at the hospital, “doctors examined [her] face and scalp which had numerous grenade shrapnel wounds. They also treated her left foot which had protruding fragments.” In addition, she states that “nurses took blood samples and hooked her up to an IV drip.” Claimant notes that “[s]ome of the wounds were superficial and some were very deep and were bleeding profusely.” According to the claimant, “[d]octors came and anesthetized parts of her face and scalp with surgical needles. They pulled out shrapnel fragments and stopped most of the bleeding.” She alleges that doctors told her that “she had a bullet wound in her left cheek which had passed clean through and left an exit wound.” Further, she alleges that they “performed an operation on her left heel[,]” and that “[s]he felt great pain when they were opening up the wound and she felt the doctors pull something out of her foot and sewing up the wound.” She also states that “she was having deep pelvic pains and she thought she was going to abort[,]” and that she “was placed on a bed with her legs raised with IV fluids being administered and was placed under observation.” Claimant alleges that “[t]heir family stayed in Israel for some time until they were flown back to Puerto Rico.”

In support of her claim, claimant has provided, *inter alia*, recent medical records; copies of newspaper articles discussing the Lod Airport incident and identifying claimant as one of those wounded in the attack; an affidavit from claimant describing the incident and her physical injuries; copies of newspaper articles discussing the Lod Airport incident and identifying claimant as one of those present; additional affidavits from two other travelers who were with claimant during the incident; several photographs purporting to depict scars on claimant's face and foot resulting from her alleged physical injuries; and a "List of Wounded [sic] Persons," purportedly from the Israel National Archives, which includes claimant's name.¹

At the outset, it should be noted that no contemporaneous medical records have been provided in support of this claim. Indeed, claimant has provided no medical records whatsoever from the period between 1972 and 2010 (the year claimant filed her claim). The only pertinent record provided from the months and years following the incident is a February 1974 newspaper article describing the experience of claimant's family during and after the incident, which notes, among other things, that claimant "was slightly wounded by a bullet and grenade fragment."

More recent medical records do provide evidence of possible shrapnel injuries, but the severity and extent of these injuries is unclear, particularly in light of the complete absence of medical records in the forty years which have elapsed since the incident. For

¹ There are discrepancies, however, between claimant's name and year of birth as given on this list and the information as it appears in other documents in this claim, including claimant's U.S. passport and birth certificate. On the List of Wounded Persons, the name that appears is 5 U.S.C. §552(b)(6) with 1916 as the year of birth. In a letter sent to the Commission, claimant's counsel notes, however, that 5 U.S.C. §552(b)(6) appears to be an approximation of her married name, Muñoz, and 'Pedro' is her father's first name." Counsel also states that the listing of 1916 as the year of birth is a typographical error (her actual year of birth is 1946). In any event, claimant's presence at the scene of the incident is established by other evidence in the file. The Commission also notes that the list provides no details concerning the nature and severity of the injuries allegedly suffered by any of the persons listed.

example, the report of a medical examination conducted in April 2010 by Boyd Collazo, M.D., notes that claimant has a “foreign object which is comparable to a metallic fragment in her left Temporal region,” as well as a “large fragment” in her left mandible, both of which are described as “palpable.” However, there is little suggestion that these “fragments” resulted in any significant injury. The report states only that the objects are “tender to deep palpation” and that claimant experiences “pain and general malaise in facial region where she has several shrapnel fragments[.]” A report of a series of radiographic images taken the same day as Dr. Collazo’s examination confirm the presence of “metallic fragments” in claimant’s left temple and mandibular areas, but no attendant abnormalities are noted. The report also notes the presence of a “metallic foreign body” on the top of claimant’s left ankle, but again, no mention is made of any associated abnormalities. Claimant has provided original copies of the x-ray images, which clearly depict the foreign bodies in claimant’s jaw and left ankle as described in Dr. Callazo’s report. Relatedly, Dr. Callazo notes that claimant “protects [her] left foot as she walks,” and “tries to hide a mild limp[.]” but he does not specifically attribute this condition to the shrapnel in claimant’s foot.

Claimant has also provided the report of a separate medical examination conducted in October 2011 by Alberto Folch, M.D., which reaches largely the same conclusions as Dr. Collazo’s April 2010 report. Dr. Folch also ordered an additional x-ray examination of claimant; the images and the report of the examination are attached with his evaluation. The x-ray report notes the presence of a foreign body measuring 6 mm in claimant’s left mandible and a 1.2 cm “metallic soft tissue shrapnel fragment” in

claimant's left ankle. The "bony structures" in both x-rays are described as "normal" or "unremarkable."

In addition, claimant has provided several recent photographs of the left side of her face and her left ankle, allegedly revealing "more or less round protrusion[s]" on her jaw and the top of the ankle. Claimant attributes both of these alleged abnormalities to the shrapnel embedded in those areas. The Commission has reviewed these photographs, and finds that they reveal, at most, barely perceptible blemishes. No photographs have been provided of claimant's left heel, where she alleges that doctors performed surgery immediately following the incident in 1972.

Given the evidence described above, the Commission cannot conclude that claimant has met her burden of demonstrating that she suffered significant, non-superficial physical injuries as a result of the Lod Airport attack. While the recent medical records are clear regarding the presence of foreign bodies in claimants' left jaw and the top of her left ankle, it is not clear that these fragments caused any significant injury or required any medical treatment beyond minor cleaning. Further, as noted above, claimant does not allege, and none of the records submitted indicate, whether she was admitted to the hospital for inpatient treatment, or merely treated and released shortly after arriving at the hospital.

In addition, the fact that no contemporaneous medical records, or indeed any medical records prior to 2010, have been submitted raises significant questions regarding the severity of claimant's alleged injuries.² On this point, the Commission notes that the

² Claimant's counsel cites the Commission's decisions in the *Claim of*, 5 U.S.C. §552(b)(6) Claim No. LIB-I-011, Decision No. LIB-I-020 (2010), and the *Claim of ESTATE OF DAVID GAISER*, Claim No. LIB-I-013, Decision No. LIB-I-032 (2010), as evidence that the Commission has accepted current medical records as sufficient evidence of injury where no contemporaneous medical records can be obtained. In

1974 newspaper article, referenced above, states that “[t]he blemish a terrorist’s bullet left on [claimant’s] cheek is almost gone now. Unless she points it out to you, you do not notice the bluish fleck, a grenade fragment, in the flesh below her temple.” An examination of the photographs which claimant has submitted confirms this to be true, *i.e.*, that the blemishes she alleges are the result of shrapnel injuries are barely perceptible. Further, because claimant has not submitted any photographic evidence or medical documentation concerning her alleged heel surgery, the Commission is unable to verify that any such procedure took place.

It should be noted that in proceedings before the Commission, the burden of submitting sufficient evidence lies with the claimant. 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) (2011).

In this case, based on the entirety of the evidence, the Commission finds that the claimant has failed to provide evidence sufficient to establish that she “suffered a discernible physical injury, more significant than a superficial injury”; that she “received medical treatment for the physical injury within a reasonable time”; and that the injury be

both of the claims cited, however, the claimant submitted other corroborating evidence from the time of the incident or shortly thereafter, such as letters from physicians who treated the claimant in the years following the incident, contemporaneous newspaper articles, and/or other medical records predating the Libya Claims Program. In the cited claims, such records corroborated the assertions of physical injury in the more recent medical records. In addition, they established a causal nexus between the injury and the incident, and provided evidence of a discernible, non-superficial physical injury sufficient to satisfy the Commission’s physical injury standard. Here, by contrast, claimants have provided no such documentation. The claim rests almost entirely on claimant’s own written statements and recent medical records. The contemporaneous records that were submitted establish only that claimant was present during the attack and suffered unspecified wounds.

verified by medical records, as required under the Commission's physical injury standard.

In light of the foregoing, the Commission is constrained to conclude that the claimant, 5 U.S.C. §552(b)(6), does not qualify for compensation under Category E of the January Referral. Accordingly, her claim must be and is hereby denied.

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

Dated at Washington, DC, May 16, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, 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) (2011).