

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)	}	Claim No. LIB-II-165
	}	
	}	Decision No. LIB-II-186
	}	
Against the Great Socialist People's	}	
Libyan Arab Jamahiriya	}	

Counsel for Claimant: Richard D. Heideman, Esq.
Heideman Nudelman & Kalik, P.C.

Oral Hearing held on February 15, 2013.

FINAL 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 Fiumicino Airport in Rome, Italy on December 27, 1985. The claim was made under Category E of the *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"). By its Proposed Decision entered December 12, 2012, the Commission denied the claim on the ground that claimant had failed to establish that her claim falls within the terms of Category E of the January Referral. Specifically, the Commission found that Category E states that claimant may *not* have been a plaintiff in a Pending Litigation against Libya, but that claimant had in fact been a plaintiff in two of the Pending Litigation cases set forth in

Attachment 1 of the January Referral, *Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya* (D.D.C.) 06-cv-727 and *Simpson v. Great Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08-cv-529. Accordingly, the Commission concluded that it did not have jurisdiction to adjudicate the merits of the claim.

On January 10, 2013, the claimant filed a Notice of Intent to Object, asserting legal and factual errors in the Commission's Proposed Decision. Thereafter, on February 8, 2013, claimant submitted a copy of a final default judgment in the *Buonocore* and *Simpson* cases, issued on January 29, 2013, finding in favor of claimant and the other plaintiffs as against the remaining, non-Libyan defendants.* The Commission held an oral hearing on February 15, 2013; the hearing consisted solely of argument by claimant's counsel, and the claimant presented no witnesses for examination.

In a cover letter accompanying the final judgment, claimant argued that the Commission "should take judicial notice of the *Bunocore* Judgment" and "give full [faith] and credit and take all necessary and proper steps to compensate ^{5 U.S.C.} §552(b)(6) for her physical injuries incurred in the Rome Airport Attack." Claimant further argued that the Commission "should use its inherent powers (and discretion) to fill the gap which exists in the Commission's interpretation of the application of the referral letters from the United States Department of State"

DISCUSSION

The Commission's jurisdiction to adjudicate claims is set forth in Title I of the International Claims Settlement Act of 1949 ("ICSA"), 22 U.S.C. § 1623 (2006). Under

* The Libyan defendants were dismissed from the *Buonocore* and *Simpson* cases by an order of dismissal issued by the United States District Court for the District of Columbia on December 24, 2008. However, the order did not apply to plaintiffs' claims against the Syrian defendants; thus, those claims remained pending.

subsection 4(a) of the ICOSA, as amended, the Commission “shall have jurisdiction . . . 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.” Here, the January Referral sets the terms of the Commission’s jurisdiction.

According to the January Referral, Category E consists of claims in which, *inter alia*, “the claimant was not a plaintiff in the Pending Litigation[.]” See January Referral, *supra* ¶ 7. Unlike with physical injury claims brought under the *Letter dated December 11, 2008, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* (“December Referral”), claimants under Category E may not have been plaintiffs in the Pending Litigation *at all*, regardless of the allegations made in the relevant pleadings. Because claimant was a plaintiff in the *Buonocore* and *Simpson* cases, it appears that the January Referral, on its face, does not permit the Commission to make an award in this claim under Category E.

Claimant argues that, notwithstanding the language of the January Referral, “it would be a gross miscarriage of justice for this physically injured claimant to not be compensated” and that the Commission should interpret the January Referral in a way that allows the Commission to find jurisdiction over this claim. In addition, claimant contends that the “intent of the State Department referral to the FCSC was clearly to allow physical[ly] injured claimants to recover[] from the fund.” In essence, claimant appears to be arguing that the Commission should depart from the plain language of the January Referral so as to avoid denying, based on jurisdictional considerations, what the

claimant contends is otherwise a meritorious claim.

During the oral hearing, claimant also urged the Commission to read the January Referral and the December Referral together, rather than in isolation, to avoid what claimant described as a “drafting anomaly.” According to claimant, the Commission’s proposed reading of the January Referral vis-à-vis the December Referral leaves claimant outside the jurisdictional requirements of both referral letters. Claimant argues that this could not have been the intent of the State Department, since it would mean that a plaintiff in the Pending Litigation who had not pled a physical injury would not be eligible for compensation under either the December or the January Referral. Thus, claimant argues that “for purposes of law,” she is not a plaintiff in the Pending Litigation.

The Commission notes that, when read together as claimant proposes, the December Referral and the January Referral do, in fact, exclude plaintiffs in the Pending Litigation who did not plead for other than emotional distress alone. Indeed, by describing this result as a “drafting anomaly,” claimant herself acknowledges that such claimants are excluded from compensation in the Libya Claims Program, even when the two referral letters are read together. The issue, therefore, is whether the Commission may close this gap on its own, notwithstanding the language of Category E.

The role of the Commission is to provide a predictable law-based adjudication of claims, both in terms of interpreting its jurisdiction over the claims based on the ordinary meaning of the terms of its jurisdictional grant (here the January Referral) as well as the faithful application by the Commission of the law it is required by statute to apply to the adjudication of claims that fall within its jurisdiction. The State Department has the authority to issue technical corrections to address any “anomalies” that may arise through

the referral process, but it is not within the Commission's competence to do so.

In addition, the argument claimant makes in her written submission relies heavily on the findings of the court in *Buonocore* and rests on the notion that the *merits* of the claim should inform the Commission's decision regarding its *jurisdiction*. However, claimant has cited no legal authority by which the Commission can, let alone should, adopt such an approach. Indeed, her argument fails to address the key issue in this claim, that is, whether claimant satisfies the requirement under Category E that she not have been a party to the Pending Litigation. On this point, the Commission notes that claimant has presented no evidence, either legal or factual, that would permit the Commission to depart from its Proposed Decision.

In summary, the Commission's jurisdiction over claims in the Libya Claims Program is governed by the provisions in the ICOSA concerning referral of claims from the Secretary of State. Acting on this authority, the Legal Adviser of the Department of State referred to the Commission specific categories of claims in the January Referral. As is clear from the excerpt cited above, the terms of the referral are clear and unambiguous as to who may file a claim under Category E. The Commission has no discretion to expand its own jurisdiction. Simply put, a claimant under Category E may not have been a plaintiff in the Pending Litigation. Because claimant was a plaintiff in *Buonocore* and *Simpson*—cases which formed part of the Pending Litigation—the Commission does not have jurisdiction to adjudicate the merits of her claim.

In light of its decision regarding jurisdiction, the Commission makes no finding as to the merits of claimant's physical injury claim.

CONCLUSION

For the reasons discussed above, and based on the evidence submitted in this claim, the Commission again concludes that the claimant has not satisfied the jurisdictional requirements for her claim. 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, February 16, 2013
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner



Anuj C. Desai, Commissioner

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Counsel for Claimant:

Richard D. Heideman, Esq.
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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 Fiumicino Airport* in Rome, Italy on December 27, 1985.

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,*

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

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

BASIS OF THE PRESENT CLAIM

On July 6, 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. The exhibits include 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 claimant⁵ U.S.C. §552(b)(6) states that on December 27, 1985, she was present at the Fiumicino Airport in Rome, Italy with her parents, brothers, and sister at the time of the terrorist attack. Claimant states that she suffered grenade shrapnel wounds to her body during the attack, and that shrapnel fragments "entered and lodged" in the left side of her head. She alleges that she required four days of hospitalization in Rome, and that her injuries have left permanent scarring to her head. In addition, claimant alleges that her shrapnel injuries subsequently caused her to develop a pituitary tumor, resulting in a number of related medical ailments.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined under Category E of 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 *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 claim must have been owned by 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 her U.S. passport valid from March 2001 to March 2011. 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 “December 27, 1985 attack at the Leonardo da Vinci Airport in Rome, Italy, as alleged in *Estate of John Buonocore III v. Great Socialist Libyan Arab Jamahiriya* (D.D.C.) 06-cv-727/*Simpson v. Great Socialist People’s Libyan Arab Jamahiriya* (D.D.C.) 08-cv-529.” *Id.*, Attachment 2, ¶ 6. In her Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of the December 27, 1985 Rome 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, are the *Buonocore* and *Simpson* cases. Claimant has indicated in her Statement of Claim that she was a plaintiff in that litigation. The pleadings in the *Buonocore* and *Simpson* cases confirm this. As such, claimant has failed to establish that her claim is within Category E of the claims referred to the Commission by the State Department’s Legal Adviser under the January Referral. The Commission is accordingly constrained to conclude that it does not have jurisdiction to adjudicate the merits of this claim under Category E. Therefore, this claim must be, and hereby is, denied.

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

Dated at Washington, DC, December 12, 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) (2012).