

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-189

Decision No. LIB-II-162

Counsel for Claimant:

Stuart Newberger, Esq.  
Crowell & Moring, LLP

Oral hearing held on September 14, 2012.

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is for additional compensation based on the alleged severity of physical injuries suffered by 5 U.S.C. § 552(b)(6) as a result of the hijacking of Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986. The claim was submitted under Category D of the January 15, 2009 *Letter 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 Proposed Decision entered May 17, 2012, the Commission denied the present claim on the grounds that the claimant had failed to establish that the severity of her injuries rose to the level of a special circumstance warranting additional compensation

under Category D, that is, compensation beyond the \$3 million already awarded to her in the program.

On June 4, 2012, the claimant filed a notice of objection to the Commission's Proposed Decision and requested an oral hearing. Under cover of letter dated August 23, 2012, claimant submitted an "Objection and Request for Oral Hearing Before the Commission" ("objection memorandum") along with the report of an "Independent Medical Evaluation" conducted by Dr. Bruce M. McCormack, M.D., dated July 27, 2012. The oral hearing was held on September 14, 2012.

#### DISCUSSION

Category D of the January Referral consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by [the Department of State's] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to [the Department of State's] December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

January Referral, ¶ 6. As noted in the Commission's Proposed Decision, claimant satisfies the first and third requirements: she received an award under the December Referral, and her Pending Litigation against Libya had been dismissed prior to submitting this claim. The only issue on objection, therefore, is whether the severity of claimant's injury is a special circumstance warranting additional compensation.

In her objection memorandum, claimant argued that the Commission (1) concluded erroneously that the evidence submitted failed to support her assertions concerning the severity of her injury, and (2) failed to appreciate the extent to which her

major life activities had been limited by her injury. Claimant re-emphasized the severity of the back pain that she continues to experience and the extent to which the pain has limited her major life activities.

Claimant submitted with her objection memorandum a July 2012 medical report by Dr. McCormack. In this report, Dr. McCormack rated claimant's whole body impairment based on the injury to her back using two methods: Diagnostic Related Estimate ("DRE") and Range of Motion ("ROM"). In employing the DRE method, Dr. McCormack assessed claimant's whole body impairment rating to be 13%. Using the ROM method, however, he asserted that claimant's whole body impairment rating totals 27%, to which he appended a three percent "add-on" to account for the pain associated with claimant's activities of daily living for a final total of 30%. To prepare his report, Dr. McCormack reviewed claimant's medical records for three hours and met with claimant for an hour.

At the oral hearing, claimant's counsel contrasted claimant's life before the hijacking with her life afterwards, focusing on the manner in which the injury adversely changed claimant's relationships with her husband and children. Claimant's counsel also highlighted claimant's assertion that she had lost her ability to bear more children as a result of her injury and noted that the Proposed Decision failed to consider this fact.

During claimant's testimony at the hearing, she described herself as a "very active" mother, home-maker, wife, and partner before the hijacking. Claimant elaborated that, as a wife and partner, she was physically active in her family's business—a soil and geological engineering company—and in the construction of their home. For example, claimant explained that she sometimes went to pick up soil samples in large buckets and

brought them to the lab for testing. Claimant also said that she had dug "holes, . . . built redwood decks," and carried and laid the paver bricks for two patios for their home.

In addition to recounting the horrific ordeal that she had endured, including the facts surrounding her escape with her children from the Pan Am Flight 73 aircraft, claimant also described her chronic pain, the treatments she sought, and the lasting effects her injury has had on her life. She testified that when she returned to the United States after the hijacking, she suffered "[e]xcruciating pain [from] time to time" in her lower back and eventually in her left leg. She further testified that as time passed her "pain started happening more frequently and more extensive[ly]," and that "gradually [it took] four, five days of bed rest and medications," including prescription pain medications, to relieve her pain. According to claimant, after having been "bedridden about six months" in 1994, she underwent a discectomy in 1995 to alleviate the pain.

Claimant testified that during the years following the hijacking, her "family life was destroyed." For example, claimant stated she "could not bathe [her] children, . . . do much of the cleaning, . . . [or] sometimes even cook the dinner because" it required reaching, bending, or lifting, all of which caused her pain to spike. Claimant repeated her assertion that her injury prevented her and her husband from having another child after the hijacking. Claimant testified that her gynecologist did not recommend that she attempt to bear more children due to possible complications both from and to her back injury.

Claimant further testified that in the years since the 1986 hijacking, she progressively has lost her ability to work. Claimant had to "cut down going to the office to a minimum" because she could not continue to lift and transport soil samples, or sit for

a long time to type reports and make telephone calls for appointments. According to claimant, in 2003, she stopped working for the family business but went on to retrain herself as a pharmacy technician. Claimant subsequently discovered, however, that she could not endure the amount of bending, reaching, lifting, standing, and sitting that the job required. As a result, she stopped working entirely in 2007.

*Analysis*

Category D of the January Referral requires the Commission to determine whether the “severity of the injury is a special circumstance warranting additional compensation.” January Referral, ¶ 6. In assessing whether compensation is warranted in this claim, the Commission considers the factors articulated in its decision in *Claim of* 5 U.S.C. § 552(b)(6) Claim No. LIB-II-109, Decision No. LIB-II-112 (2011). These factors, assessed in light of the totality of the evidence, include the nature and extent of the injury, the extent (if any) of physical disfigurement, and the effect on the claimant’s major life functions.

The first factor is the nature and extent of the injury. The Commission determined in the Proposed Decision that while the evidence submitted by claimant does demonstrate her persistent back pain, the medical records do not support her assertions that her injuries are among the most severe in the Libya program. The initial injuries claimant sustained while escaping from the aircraft—bruises and other impact injuries to her back and legs from the exit door and the escape slide—are not severe when compared with others in this program. Specifically, claimant’s injuries did not require immediate medical care and, according to Dr. Porter, claimant’s treating physician in 1987, her initial injury resulted in “pain and tenderness over [her] sacrum . . . and multiple areas of

localized tenderness over [her shins].” Indeed, claimant’s medical records indicate that Dr. Porter ordered x-rays and recommended physical therapy as the only treatment, and that claimant completed this physical therapy successfully.

Moreover, the medical evidence fails to establish that the nature and extent of claimant’s continuing back injury is sufficiently severe to warrant additional compensation beyond the \$3 million she has already received in this program. Claimant has made many assertions regarding the consequences of her injuries; she has stated, for instance, that she was “six months paralyzed on [her] left side [and] bed-ridden.” However, claimant has provided no medical evidence to support these assertions; none of the medical records indicate that doctors prescribed prolonged bed-rest, observed any paralysis, instructed claimant to refrain from working, or told her that she would not be able to resume living a generally normal life after treatment. Instead, the contemporaneous medical records merely demonstrate that claimant suffered from intermittent bouts of back pain and required back surgery in 1995 (the only significant medical procedure in the record). Indeed, even records from claimant’s 1995 surgery, which required two days hospitalization in addition to convalescence at home, contain no references to restrictions on activities, but rather instructed her to “increase [activity] gradually as tolerated.” Moreover, the 1995 surgery appears to have had the desired effects as there are no further medical records documenting any subsequent treatment. In short, the medical records are insufficient to meet claimant’s burden to demonstrate that the severity of claimant’s injury warrants additional compensation.

Furthermore, Dr. McCormack’s July 2012 report provides no additional support for claimant’s assertions regarding the severity of her injury. The opinion is based upon a

one-hour interview with the claimant and a review of her medical records, the same records that are before the Commission. As a result, Dr. McCormack's opinion essentially relies on and largely repeats the assertions made by claimant and her daughter in their affidavits as well as assertions from previously submitted medical records. The Commission has already found this evidence to be insufficient to support a finding that claimant's injury is sufficiently severe to warrant additional compensation.

Turning to the remaining factors, the second factor is the extent (if any) of physical disfigurement. The Commission determined in its Proposed Decision that, although claimant asserted she suffered a disfigurement on her back, "she has failed to provide any evidence of a scar, such as a photograph of such disfigurement." Claimant has not offered any new evidence or testimony to alter the Commission's determination on this point.

The final factor is the effect of the injury on the claimant's major life functions. In the Proposed Decision, the Commission found that claimant's medical records do not support "her assertions concerning the extent [and severity] of her limitations." Specifically, the Commission determined that the "medical records do not include any evidence that claimant was unable to perform the duties of her employment," such as a disability determination by the Social Security Administration. Moreover, the medical records do not indicate "that claimant had been or was required to be on bed rest prior to her surgery as she has asserted."

In claimant's testimony at the oral hearing, she named several major life functions, such as working and housekeeping, in which she claims she has been severely limited as a result of her pain. However, other than her testimony, she has submitted very

little evidence establishing the types of activities from which she was significantly limited. The principal medical support for any limitations is a 1995 report by Dr. Ahmed—considered by the Commission in its Proposed Decision—who advised the claimant “to avoid lifting, bending and strenuous physical activities.” Dr. McCormack’s July 2012 evaluation, the only new evidence on objection, is unhelpful not only because of his minimal contact with the claimant, as noted above, but also because of the low rating he attributes to the pain associated with claimant’s activities of daily living. Dr. McCormack hypothesizes that claimant’s records indicate her impairment rating would have been five percent in 1987, 10% in 1995, and, as a result of her surgery and aging, is currently 30%. Yet, Dr. McCormack explicitly attributes only three percentage points of this 30% impairment rating to claimant’s pain “considering affects [*sic*] on [activities of daily living].” The Commission does not find this evidence, along with the medical records and claimant’s testimony, sufficient to support a finding that the claimant’s injury has significantly limited her in her major life functions.

Finally, the Commission finds no need to address claimant’s alleged loss of her ability to bear children. There is nothing in the medical record to support this allegation beyond claimant’s own affidavits and testimony, and Dr. McCormack’s repetition of claimant’s allegation.

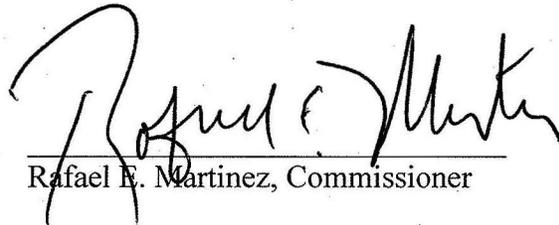
Accordingly, the Commission concludes that the evidence is insufficient to make a finding that the severity of claimant’s injury is such as would warrant an award of compensation under Category D in addition to the \$3 million that has been awarded to her for her injury in this program.

CONCLUSION

For the reasons set forth above, the Commission concludes that 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, January 22, 2013  
and entered as the Final Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

  
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Anuj C. Desai, Commissioner



*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 Categories A and D. According to the January Referral, Category A consists of

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to [the Secretary of State’s] referral of December 11, 2008.

*Id.* at ¶ 3. Category D of the January Referral consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by our December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to our December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim’s death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

*Id.* at ¶ 6. Attachment 1 to the January Referral Letter lists the lawsuits comprising the Pending Litigation.

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).

On April 7, 2011, the Commission adjudicated claimant’s physical injury claim under the December Referral. In its decision, the Commission determined that the claimant injured her back as she was escaping from the airplane. The Commission concluded that the claimant’s injury met the Commission’s standard for physical injury and that the claimant was entitled to compensation in the amount of \$3 million. *Claim of* 5 U.S.C. §552(b)(6) , Claim No. LIB-I-043, Decision No. LIB-I-035 (2011).

#### BASIS OF THE PRESENT CLAIM

On August 2, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts claims under Categories A and D of the January Referral together with exhibits supporting the elements of her claim, including evidence of her U.S.

nationality, and the extent of her injury. In support of her claim for additional compensation, claimant asserts that, as a result of the injury to her back, she has suffered “years of intense back pain that required ongoing medical care, and eventually necessitated serious surgery... .” Further, she asserts that she “suffered from post-traumatic stress syndrome after the attack, and required many years of psychological treatment for her ongoing nightmares and emotional issues stemming from the attack.” The evidence submitted includes the statements of both claimant and her daughter, medical records, and medical opinions.

## DISCUSSION

### *Category A Claim*

As noted above, the Commission made an award to the claimant in the amount of \$3 million for her December Referral claim of physical injury. The language of the January Referral provides that in order for a claim to be included under Category A the claimant must establish that he or she “did not receive an award pursuant to [the Secretary of State’s] referral of December 11, 2008.” Given the Commission’s Decision awarding claimant’s claim under the December Referral, the claimant is unable to meet this critical element of Category A. Accordingly, the Commission concludes that this claim for compensation under Category A of the January Referral must be, and hereby is, denied.

### *Category D Claim*

#### Jurisdiction

Under subsection 4(a) of the ICSA, the Commission’s jurisdiction here is limited, under Category D of the January Referral, to claims of individuals who: (1) are U.S.

nationals; (2) received an award under the December Referral; and (3) have dismissed their respective Pending Litigation cases against Libya. January Referral, *supra*, ¶ 6.

*Nationality*

The Commission determined in its decision on claimant's physical injury claim under the December Referral that the claim was owned by a U.S. national from the date of the incident continuously through the effective date of the Claims Settlement Agreement. That determination applies equally to satisfy the nationality requirement here.

*Award Under the December Referral*

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

*Dismissal of the Pending Litigation*

The January Referral also requires that the claimant provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, *supra*, ¶ 6. The Commission determined in its decision on claimant's physical injury claim under the December Referral that the Pending Litigation in question, *Patel v. Socialist People's Libyan Arab Jamahiriya, et al.*, Case No. 06-cv-626, filed in the United States District Court for the District of Columbia, had been dismissed under a Stipulation of Dismissal dated December 16, 2008. That determination also applies here.

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

#### Merits

Category D of the January Referral requests, in pertinent part, that the Commission determine whether "the severity of the injury is a special circumstance warranting additional compensation." In making this determination, the Commission considers the following. First, the Commission is familiar with the nature of all of the injuries that fall under Category D.\* Second, the Commission's standard for physical injury in this program sets a relatively low threshold for compensable injuries; specifically, a claimant need only establish that he or she suffered an injury that is discernible, and more significant than a superficial injury. *See Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-I-001, Decision No. LIB-I-001, at 8-9 (2009). Third, the amount of compensation awarded for compensable injuries in this program—a fixed amount of \$3 million for each compensable injury—is, in the Commission's experience, exceptionally high when compared to other claims programs, and extraordinarily high for compensable injuries that were not severe, but which nonetheless met the Commission's standard. Therefore, to the extent that a monetary award can ever adequately compensate for a physical injury, the eligible claimants in this program have, for the most part, been adequately compensated via the Commission's awards under the December Referral.

Considering the foregoing, the Commission concludes that only the most severe injuries will constitute a special circumstance warranting additional compensation under

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\* As indicated above, in its adjudication of claims under the December Referral, the Commission has already examined all of the eligible Category D claims.

Category D. In determining which injuries are among the most severe, the Commission considers the nature and extent of the injury itself, the impact that the injury has had on claimant's ability to perform major life functions and activities—both on a temporary and on a permanent basis—and the degree to which claimant's injury has disfigured his or her outward appearance. These factors are applied to the present claim as set forth below.

In support of claimant's Category D claim for additional compensation, claimant has incorporated by reference the record of her claim under the December Referral and, further, has submitted, among other documents, her own declaration as well as the declaration of her daughter,<sup>5</sup> U.S.C. §552(b)(6).

The claimant states, in her declaration, that for a few years after the hijacking her “back was in pain almost all of the time”; even with medication “every few weeks [she] would be in so much pain that [she] could not even get out of bed for a few days”; she had “difficulty walking...could not bend over...trouble sitting up... it was very difficult for [her] to carry anything of significant weight...it was very difficult for [her] to take care of her youngest children...[and] difficult for [her] to drive a car.” She further states that “[p]rior to the hijacking, [she] had worked ...as [an] office manager [;however,] because of [her] back pain...within 2-3 years after the hijacking, [she] was no longer able to work on a full time basis [and, thereafter,] could not work anymore.” She also asserts that, after the hijacking, she “was no longer able to garden...cook...[and] had to give up sewing.” Over time, claimant asserts that the pain “became steadily worse” until 1994 when it “became so severe that [she] was forced to stay in bed for more than 6 months.” In June of 1995, she asserts that she “had no choice other than to have surgery on [her] back.” However, even post-surgery, she asserts that she is still unable to work or “drive for periods of time” and

she has a “3-4 inch scar on [her] lower back” as a result of the surgery. Also, as noted above, claimant asserts that she “suffered from post-traumatic stress syndrome after the attack, and required many years of psychological treatment for her ongoing nightmares and emotional issues stemming from the attack.” Claimant’s daughter, in her declaration, corroborates the limitations asserted by her mother.

In support of her December Referral claim, claimant submitted medical records both current and approximately contemporaneous to the incident. The earliest medical record submitted by claimant is dated April 13, 1987—approximately 7 months after the hijacking—wherein claimant complained of low back pain associated with the hijacking. The records demonstrate that claimant was treated for approximately 2 months with both medication and physical therapy. Claimant next sought medical treatment in June of 1989, from a Dr. Kula, because “she had a significant increase in low back pain” in February of 1989. Dr. Kula prescribed physical therapy for the claimant with a James Welsh. In a letter dated November 21, 1989 from James Welsh to Dr. Kula, Mr. Welsh stated that “any pain she has now goes away with rest.” Dr. Kula in his record generated on November 29, 1989 noted that “[t]he patient is capable of continuing in her work schedule which is at home.” Next, in November of 1992, a Dr. Jaini appears to have referred claimant to a Dr. Terasaki for an MRI on claimant’s lumbar spine. Dr. Terasaki found a “[v]ery small disc herniation at the L5-S1 level which minimally displaces the left S1 nerve root.” In February of 1995, Dr. Jaini again referred claimant for an MRI. In a report dated May 28, 1995, a Dr. Mohammed Ahmed noted that claimant had “more severe pain” for the past couple of months. Further, Dr. Ahmed noted that “[c]linically [claimant] does have L5-S1 radiculopathy...most likely [due] to disc protrusion.” Dr Ahmed advised claimant to

“avoid lifting, bending and strenuous physical activities.” Finally on June 26, 1995, claimant underwent an L5-S1 discectomy, remained in the hospital for 2 days, after which she was released in “Ambulatory” condition. Regarding claimant’s present condition, a Dr. Borenstein, in his opinion dated March 15, 2010, opined that claimant “continues to have chronic back pain directly related to the fall that occurred in the setting of the hijacking.”

With regard to the claim of psychological trauma suffered because of the hijacking, the Commission notes its finding in *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> Claim No. LIB-II-109, Decision No. LIB-II-112 “that ‘the injury’ referred to under this Category is the injury for which an award was issued by the Commission under the December Referral.” In this case, as noted above, the Commission determined that the compensable injury under the December Referral was the injury to claimant’s back, not the emotional injury resulting from the hijacking for which she also claimed compensation. Moreover, the Commission notes that it has previously determined that compensation under the December Referral is limited to claims for physical, not psychological, injury. *See, e.g., Claim of* <sup>5 U.S.C. §552(b)(6)</sup> , Claim No. LIB-I-033, Decision No. LIB-I-046 (2011); *Claim of* <sup>5 U.S.C. §552(b)(6)</sup> , Claim No. LIB-I-041, Decision No. LIB-I-030 (2010). For these reasons, claimant’s request for additional compensation based on psychological trauma is rejected.

Concerning that portion of the claim for additional compensation based on the physical injury suffered by the claimant, the Commission notes that while the medical records submitted by claimant corroborate her assertion that she suffered from low back pain since the hijacking and that the pain worsened until surgical intervention became

necessary, they do not support her assertions regarding the extent of her limitations including her inability to work. The medical records do not include any evidence that claimant was unable to perform the duties of her employment, nor has the claimant submitted any evidence of any determinations by any agency—e.g., the Social Security Administration—that she was disabled. Further, the asserted severity of the limitations imposed on claimant by this injury are not supported by the medical records—e.g., there is no indication that claimant had been or was required to be on bed rest prior to her surgery as she has asserted.

Considering the totality of the evidence submitted, the Commission is not persuaded that the severity of the injury suffered by the claimant is such that it would qualify for additional compensation under Category D, that is, beyond the \$3 million already awarded. In this regard, the Commission notes that the physical injury sustained by the claimant has not required significant hospitalization. Furthermore, while the claimant has asserted that she suffered a disfigurement on her back, she has failed to provide any evidence of the scar, such as a photograph of such disfigurement. With regard to the physical limitations associated with claimant's injuries, it appears from the evidence that while claimant experiences pain or requires rest after long periods of activity, she is not substantially limited from engaging in any of her major life activities. Accordingly, while the Commission in no way wishes to minimize the fact of claimant's pain, it finds that the circumstances that she describes do not amount to a substantial impairment so as to warrant additional compensation.

Consequently, the Commission concludes that the severity of the injury in this claim does not rise to the level of a special circumstance warranting additional

compensation under Category D, beyond its award of \$3 million under the December Referral.

Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, May 17, 2012  
and entered as the Proposed Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

  
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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).