

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Republic of Iraq

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Claim No. IRQ-I-020

Decision No. IRQ-I-024

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries she suffered while being held hostage in Iraq and Kuwait for nearly a month in August 1990. The United States Department of State has already provided her compensation for her experience as a hostage. She now seeks additional compensation based on a claim that, as a result of her captivity, she suffered various mental and emotional injuries. Although we are sympathetic to all that Claimant endured as a result of her hostage experience, Claimant has not explicitly alleged or established that a discrete act of sufficient brutality or cruelty, other than the hostage taking itself, caused her injuries. Thus, under the terms of this program, she has failed to show that she is entitled to additional compensation beyond that which the State Department has already provided her. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that in July 1989, she went with her son and husband to Kuwait, where her husband began serving as a high-ranking official in the U.S. Embassy. Following Iraq's attack on Kuwait in August 1990, she claims that Iraq effectively held her hostage, primarily in the U.S. Embassy in Kuwait, followed by three days in Baghdad, before releasing her at the Turkish border on August 27th. She also states that on her trip from Baghdad to the Turkish border she was stopped at a number of checkpoints where she was asked about her husband's whereabouts; at one of these checkpoints, she says Iraqi officials threatened her son and at another an officer pointed his gun at Claimant, threatening to shoot her in front of her son. Claimant's experiences and injuries are detailed in the Merits section below.

Claimant was part of a group of plaintiffs that sued Iraq in federal court in 2001 for, among other things, hostage-taking and wrongful conduct, seeking damages for a variety of injuries, including severe emotional distress. *See* ⁵ U.S.C. §552(b)(6)

. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some,

like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally associated with" being held hostage or subject to unlawful detention.¹ Claimant states that the amount of the payment she received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. Pursuant to this formula, Claimant received \$280,000.

The State Department's Legal Adviser then requested that the Commission commence a claims program for some of the hostages whom the State Department had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who had suffered a "serious personal injury," when the severity of that injury is a "special circumstance warranting additional compensation." The State Department made its request in a letter dated November 14, 2012, which the Commission received pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to "receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or of any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State"). The letter sets forth the category of claims as follows:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq¹ in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking² provided that (1) the claimant has already received compensation

¹ A group of hostages, not including Claimant, received compensation for economic loss. The hostages that received compensation for economic loss are not before the Commission in this program.

under the Claims Settlement Agreement from the Department of State³ for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, “serious personal injury” may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

¹ For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

² Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

³ The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”) at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. Commencement of Iraq Claims Adjudication Program, 78 Fed. Reg. 18,365 (Mar. 26, 2013).

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of her claim, including evidence of her U.S. nationality, her receipt of compensation from the Department of State for her claim of hostage-taking, and her alleged personal injuries.

DISCUSSION

Jurisdiction

The 2012 Referral's statement of the category of claims defines the Commission's jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to entertain only claims of individuals who (1) are U.S. nationals; and (2) "already received compensation under the Claims Settlement Agreement from the Department of State¹ for [their] claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq[.]" 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

Nationality

This claims program is limited to "claims of U.S. nationals." Here, that means that a claimant must have been a national of the United States at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 5 (2014) (Proposed Decision).

Claimant satisfies the nationality requirement. She has provided a copy of two U.S. passports: one from the time of the hostage-taking (valid from February 1987 to February 1992) and her current one (valid from April 2009 to April 2019).

Compensation from the Department of State

Claimant also satisfies the second jurisdictional requirement. She has submitted a copy of a Release she signed on August 15, 2011, indicating her agreement to accept \$280,000 from the Department of State in settlement of her claim against Iraq. She has

also submitted a copy of an electronic notification from the Department of State that she received this sum on October 4, 2011. Claimant further stated under oath in her Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

Merits

The 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of his or her claim. Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 7-8 (Proposed Decision). First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” In order to satisfy this standard, the injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. *Id.* at 7.

The second requirement is that Iraq must have “knowingly inflicted” the injury. Thus, even where a claimant suffered a serious personal injury that satisfies the other requirements in the 2012 Referral, it must be proven that Iraq knowingly inflicted the injury.²

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” In making this determination, the Commission will consider the nature

² “Iraq” is defined in footnote 1 of the Referral.

and extent of the injury itself (including the specific acts committed by Iraq giving rise to such injury), the extent to which the injury substantially limits one or more of the claimant's major life activities (both in the immediate aftermath of the injury and on a long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury. *Id.* at 8.

Here, the facts Claimant alleges, as developed in the record as it stands, do not satisfy the requirement that Claimant have suffered a "serious personal injury" within the meaning of the Referral. We thus need not address the question of whether Iraq "knowingly inflicted" such an injury on her or whether the severity of her injuries constitutes a "special circumstance warranting additional compensation."

A review of the facts Claimant alleges and the evidence she has submitted³ shows that though she no doubt suffered tremendously, she cannot recover under the Referral because she has not proven that her injuries arose from "sexual assault, coercive interrogation, mock execution, or aggravated physical assault" or any other acts, separate from the hostage-taking experience, comparable in brutality or cruelty.

Kuwait City: Claimant alleges that in July 1989, she went with her son and husband to Kuwait, where her husband began serving as a high-ranking official in the U.S. Embassy. Following Iraq's invasion of Kuwait on August 2, 1990, Claimant's husband went to the Embassy where he stayed until the next day when he returned to their apartment to drive Claimant and their son to the Embassy. Claimant states that, for the next three weeks, she and her family remained at the Embassy which was crowded

³ To prove her allegations, Claimant has submitted a copy of the sworn declaration she filed in 2007 in her federal district court suit, a sworn 2013 declaration specially prepared for this Commission, newspaper articles, a letter from a United States Senator, mental health care records, and copies of her U.S. passports. Except where noted, the facts we outline below are those established by evidence.

and where food was rationed. Despite being in a state of constant fear, Claimant used her prior training as a nurse to tend to others in the compound.⁴

Travel from Kuwait to Baghdad: Claimant and her family left the Embassy on August 23, 1990, driving in a convoy of diplomatic families to Baghdad, where they had been told by Iraqi officials they would be granted exit visas. On arriving in Baghdad on August 24, 1990, they were told that only the women and children would be allowed to leave, but that the men would have to stay behind. Claimant states that when she parted with her husband on the morning of August 26, 1990, she was distraught at leaving him behind and feared that she would never see him again. She states that surveillance by Iraqi officials and the anti-American demonstrations in the streets added to her distress for her husband's safety.

Travel from Baghdad to Turkey: Claimant and her son then travelled from Baghdad to the Turkish border. The trip took 23 hours. Claimant states that she was stopped at a number of checkpoints along the route: she states that "Iraqi officers threatened us several times, asking me where my husband was. They either did not believe me or pretended not to when I said he was still in Baghdad. At one checkpoint, they made my son and [me] stand near a pit containing guard dogs, implying that the dogs would be let loose on my son if I did not reveal my husband's whereabouts." Her Declaration continues with her experiences at another checkpoint, where "an officer

⁴ One of the newspaper articles Claimant submitted notes that she helped the approximately 200 detainees around the clock with injuries ranging from cuts to serious illnesses, and that she received a citation from the State Department in "recognition of [her] selfless, courageous and compassionate service Aug. 2, 1990 to Aug. 24, 1990, as nurse to all who sought sanctuary on the compound of the American Embassy in the aftermath of the Iraqi invasion of Kuwait and to employees and dependents evacuated by road to Baghdad." 5 U.S.C. §552(b)(6)

, June 8, 1991, at A1. Likewise, the Claimant has submitted a June 18, 1991 letter she received from a United States senator commending the Claimant on her "valiant work" and congratulating her on receiving a citation from the State Department.

pointed his gun and threatened to shoot [her] in front of [her] son.” About this experience, she says, “We were scared to death.” This incident, when she was threatened in front of her son, also appears to be evidenced in medical records from 1996: notes from Claimant’s stay at a psychiatric hospital that year include the phrase “threatened to shoot wife in front of son” in a section of notes discussing Claimant’s time in Kuwait and Iraq. Claimant also states that, “[w]hen the convoy reached the Turkish border, armed soldiers ordered [them] out of [their] vehicles and lined [them] up at gunpoint while searching [their] vehicles.”

It was by then early in the morning of August 27, 1990, and the Iraqis allowed Claimant to cross the border into Turkey. She then flew back to the U.S. She spent the next few months in a state of distress as she awaited the fate of her husband, who was finally released on December 9, 1990.

Injuries Alleged: Claimant states that, as a result of her time as a hostage, she has suffered severe and long-term psychological injuries that have substantially interfered with her ability to enjoy life. These injuries include chronic depression, post-traumatic stress disorder, suicidal ideation, anxiety, panic episodes, insomnia and difficulties with concentration. She has also provided medical records reflecting that she suffered a nervous breakdown in November 1996, was hospitalized for one week then, and thereafter received out-patient therapy. At least some of her mental health ailments are ongoing, and she continues to take medication to treat depression.

Analysis: Claimant argues that her injuries qualify as “serious personal injuries” and are severe enough to constitute a “special circumstance warranting additional compensation” in this program. She contends that her injuries arose solely from her

captivity as a hostage and not from any discrete or specific act or acts other than the hostage-taking itself. Thus, Claimant's legal theory is that injuries that arose solely from the hostage experience itself can warrant compensation under the Referral as long as those injuries are "substantially more severe than those suffered by the large majority of others who were subjected to Iraq's hostage-taking policy"

Commission precedent requires us to reject this argument. As noted above, the Commission has previously interpreted the phrase "serious personal injury" in the Referral to mean injuries arising from one of the Referral's four enumerated acts or some other act of a similar type or a similar level of brutality or cruelty. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014). Claimant has not alleged such an act here.

Claimant's submission does, however, contain allegations of certain facts that might make out a claim that Iraqi officials coercively interrogated her, or otherwise subjected her to one or more discrete acts, separate from the hostage-taking experience, that are comparable in brutality or cruelty to those enumerated in the 2012 Referral. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) at 6-8 (Proposed Decision); and Claim No. IRQ-I-007, Decision No. IRQ-I-013 (2014), at 17-18 (Proposed Decision). Despite these allegations, Claimant does not argue that she is entitled to compensation in this program based on coerced interrogation or any other comparable discrete act, separate from her hostage experience, and has not fully developed an evidentiary record establishing any such act.

Here, the record contains some evidence — in Claimant's 2007 Declaration and supported by notes from her 1996 hospitalization — that Claimant and her son were threatened at checkpoints on their way from Baghdad to the Turkish border and that Iraqi

officials sought information about Claimant's husband's whereabouts. If Claimant's evidence had established that Iraqi officials threatened her or her son with violence in order to induce her to tell them where her husband was, this would likely have constituted a "coercive interrogation" within the meaning of the 2012 Referral. Claimant also potentially could make out a claim for an act of a similar type or a similar level of brutality or cruelty. On this record, however, Claimant has failed to meet her burden to prove a compensable claim. Claimant's evidence is insufficient, for example, to show that she was coercively interrogated. While her 2007 Declaration does say that she was threatened "several times" and mentions specific threats at two different checkpoints, Claimant has given only a relatively scant description of the key events alleged at those two checkpoints. As to the checkpoint where the Iraqi officials made Claimant and her son "stand near a pit containing guard dogs," Claimant's allegations are also uncorroborated by, for example, third-party affidavits or contemporaneous evidence. Moreover, she has not provided sufficient details about a number of facts that would speak to whether the Iraqi officials did in fact coercively interrogate her or perpetrate an act of a similar type or a similar level of brutality or cruelty: (1) what specifically the Iraqi officials said to her or asked of her, including in particular, how she was threatened; (2) were the threats specific to her or were they aimed at everyone in the convoy; (3) in what way, if at all, were the threats connected with an attempt to extract information from her; and (4) was there something specific about Claimant's husband in particular that the Iraqi officials wanted to know and, if so, why.

As for the checkpoint where an officer "pointed his gun and threatened to shoot [Claimant] in front of her son," there is no specific evidence that this was in connection

with an attempt to elicit information from Claimant. We do have evidence from Claimant's 1996 hospital records that suggests that this did in fact happen. There is also a reference earlier in the Declaration to "Iraqi officers threaten[ing] [her and her son] several times, asking [her] where [her] husband was," but nothing that connects this questioning to the specific checkpoint where an officer threatened to shoot Claimant in front of her son. Likewise, for a claim that Iraq perpetrated an act of a similar type or a similar level of brutality or cruelty, the Commission would need to have more information regarding the nature of the immediacy of the threat to Claimant and her son; how the threat was made; and whether the threat was specific to them or was made generally and/or to a larger group.

In addition to the paucity of the evidence specifically submitted in this claim, we must also place the facts of this claim in the context of the evidence presented in other claims in this program. As the evidence in this claim and others indicates, Claimant and her son were part of a large convoy of women and minors traveling from Baghdad to the Turkish border that day. Two other claimants in this program were in that convoy and have described what might have been the same incident at the same checkpoint where Claimant says she was interrogated about her husband. *See* Claim No. IRQ-I-024, Decision No. IRQ-I-012 (2014), at 15 (Proposed Decision) and Claim No. IRQ-I-016, Decision No. IRQ-I-016, at 14 (2014) (Proposed Decision). In those two claims, the claimants argued that the Iraqis had subjected them to a mock execution, but we rejected their arguments. We determined that, while no doubt causing the hostages to be "terrified," the scenario was very much like "being held under armed guard" and was thus "very much like a typical hostage-taking scenario." Since the State Department had

already compensated the claimants for having been held hostage, we concluded that they were not entitled to additional compensation in this program. Decision No. IRQ-I-012 at 15, *citing* Claim No. LIB-II-003, Decision No. LIB-II-016 (2011). Moreover, those claimants did not even mention questioning of any kind, let alone allege coercive interrogation. Of course, this does not mean that the Claimant in this claim was not coercively interrogated or that she was not subjected to an act of a similar type or a similar level of brutality or cruelty, but it does mean that, if she contends that she was treated differently from the others in that convoy, we would need evidence and a more specific explanation to that effect.

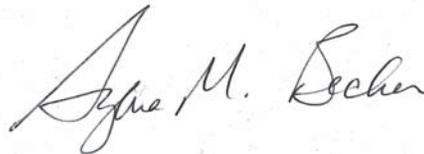
In sum, although we sympathize with all that Claimant has experienced both during and since her captivity, on this record, Claimant has not met her burden to prove that she suffered a “serious personal injury” within the meaning of the 2012 Referral.

Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, August 14, 2014
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2013).