

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-063

Decision No. LIB-II-042

Counsel for Claimant:

Richard D. Heideman, Esq.
Heideman Nudelman & Kalik, P.C.

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 Letter”).

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within

the terms of the Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On February 18, 2010, the Commission received from claimant a completed Statement of Claim, in which she asserts a claim under Category E of the January Referral Letter, 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 and her husband were present at the Fiumicino Airport in Rome, Italy at the time of the terrorist attack. According to the Statement of Claim and accompanying exhibits, claimant suffered gunshot and shrapnel wounds to her left arm and leg as a result of machine gun fire and hand grenade explosions. She states that, immediately following the incident, she was taken to the hospital, where, in a state of shock, she was admitted for treatment, which included surgery to remove shrapnel from her body as well as radiological and other diagnostic examinations.

DISCUSSION

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission's jurisdiction here is limited to the category of claims defined under the January Referral Letter; 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 case against Libya. January Referral letter, *supra* ¶ 7.

Nationality

In the *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order for the nationality requirement to have been met, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. To meet this requirement, the claimant has provided a copy of her U.S. birth certificate and 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 the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral letter. January Referral

Letter, *supra*, ¶ 7. This list includes the “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 also satisfied this element of her claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, are the *Buonocore* and *Simpson* cases. Claimant has stated under oath in her Statement of Claim, and the pleadings in the *Buonocore* and *Simpson* cases confirm, that she was not a plaintiff in that litigation. Based on this evidence, the Commission finds that the claimant has 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 Letter and is entitled to adjudication on the merits.

Merits

Standard for Physical Injury

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet “the standard for physical injury

or wrongful death, as appropriate, adopted by the Commission” for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of* ^{5 U.S.C. §552(b)(6)}

Claim No. LIB-II-039, Dec. No. LIB-II-015 that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

Claim of ^{5 U.S.C. §552(b)(6)} *supra*, 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 and her husband were standing near the Sabena Airlines ticket counter at Fiumicino airport on December 27, 1985 when terrorists opened fire with machine guns and tossed hand grenades at waiting passengers. Claimant states that she was thrown to the ground by the force of grenade explosions, and that she suffered multiple penetrating shrapnel wounds to her left arm and leg. She further states that a bullet passed through the underside of her left arm, and that her husband tied his belt around her arm to stop the bleeding.

In support of her claim, the claimant has provided both contemporaneous and recent medical records, a narrative description of the incident and her physical injuries, contemporaneous newspaper clippings identifying her as one of the injured victims of the attack, and a copy of a Writ of Summons issued by an Italian court in connection with

criminal proceedings against one of the Rome Airport terrorists, identifying claimant as one of the individuals injured in the attack and requesting her presence in a hearing related to those proceedings.

According to the medical records provided with this claim, claimant was admitted to the Policlinico Universitario 'A. Gemelli' in Rome, where it was determined she had suffered a "gunshot wound/injury on the left arm" that left clear entry and exit wounds, as well as shrapnel injuries to her left arm and lower right leg with "retention of smaller foreign metallic objects." The admission record notes that claimant arrived at the hospital in a state of shock, was given a prognosis of "50 days for recovery," and received treatment that included the "[r]emoval of all visibly established foreign objects" and the cleansing of her wounds. Evidence in the file indicates that doctors conducted x-ray examinations and performed blood work, and that claimant was discharged the following day.

Claimant states that her injuries have left permanent scars on her left arm and leg, and that she has "ongoing intermittent pain in her left arm and pain in her leg where shrapnel also remains" The presence of shrapnel is confirmed by the results of a radiological examination conducted on February 1, 2010, accompanied by several x-ray images, which note the presence of both a "larger metallic foreign body" and "[m]ultiple other flecks of metal" embedded in claimant's left arm.

Based on the evidence submitted, the Commission finds that the claimant's injuries meet the standard for physical injury set forth above. Accordingly, claimant

5 U.S.C. §552(b)(6)

is entitled to compensation as set forth below.

COMPENSATION

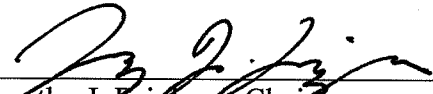
In *Claim of* ^{5 U.S.C. §552(b)(6)} *supra*, the Commission held that \$3 million is an appropriate amount of compensation for physical injuries that meet the Commission's standard under Category E, and that compensable physical injury claims in this claims program are not entitled to interest as part 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 therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-1627 (2006).


AWARD

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

Dated at Washington, DC, May 10, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael B. Martinez, Commissioner

**This decision was entered as the
Commission's Final Decision on
JUN 20 2011**

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2010).