

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-175

Decision No. LIB-II-139

Counsel for Claimant:

Charles S. Sims, Esq.
Proskauer Rose LLP

ORDER

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. This 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 March 15, 2012, the Commission denied the present claim, on the grounds that the claimant had not met her burden of proving that the limitations of her major life activities and/or the disfigurement to her outward

appearance were significant enough so as to qualify her for additional compensation. The claimant objected and requested an oral hearing which was held on June 20, 2012.

At conclusion of the oral hearing, the Commission stated that it would allow claimant additional time to obtain further evidence to support Dr. Tony P. Lopez's statement dated May 28, 2012, as well as other records of examination and/or treatment such as the gait analysis referenced by claimant at the hearing. During the oral hearing, after consulting with claimant, claimant's counsel stated that claimant would submit any additional evidence within 30 days or, in the event further time was necessary, claimant would contact the Commission to request such additional time. The claimant did not submit any additional documentation within the 30 day period nor did she contact the Commission to request additional time. On October 26, 2012, some four months after the oral hearing, the Commission entered the Final Decision in this claim. In its Final Decision the Commission denied the present claim on the grounds that it remained unpersuaded that the severity of the injury in this claim rises to the level of a special circumstance warranting additional compensation under Category D.

On or about November 9, 2012, claimant's counsel contacted the Commission and asserted that an additional medical report in support of this claim would be received by counsel imminently. The Chief Counsel informed claimant's counsel that if he wished reconsideration based on this evidence, the Commission's regulation provided such an opportunity in limited circumstances. Under cover of letter dated November 30, 2012, claimant submitted a "Petition to Reopen Claim" based on her having obtained new evidence which she asserts was not available when the Commission rendered its Final Decision. The new evidence, consisting of a report from a Eugene P.

Toomey, M.D. dated November 28, 2012, recounts his examination of claimant on August 20, 2012. Dr. Toomey concludes that he ‘doubt[s] with a foot injury like this that [claimant] will ever be able to undertake running sports on a regular basis or have running as a primary exercise activity” and that “she will be relegated to using custom arthrooses [sic] to improve her symptomology for the rest of her life.”

Subsection 509.5(k)(l) of the Commission’s regulations provides:

At any time after a final Decision has been issued on a claim,. . . but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition will be entertained unless it appears therein that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the Final Decision or the date on which the Proposed Decision was entered as the Final Decision; that it was not for want of due diligence that the evidence did not come sooner to the claimant's knowledge; and that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of that evidence would produce a different decision. The petition must include a statement of the facts which the petitioner expects to prove, the name and address of each witness, the identity of documents, and the reasons for failure to make earlier submission of the evidence.

45 CFR 509.5(k)(l)(2011)

The evidence provided recently with claimant’s petition is not newly discovered evidence but, rather, newly created evidence. It appears from Dr. Toomey’s report that the evaluation of claimant conducted on August 20, 2012 was of her first visit and that she sought this evaluation solely in support of this Category D claim before the Commission. Although Dr. Toomey’s report was dated November 28, 2012, after the date of the Commission’s Final Decision, claimant knew that the report would be available as of her evaluation on August 20, 2012. This evidence fails to meet the Commission’s regulations for reopening of a claim. Furthermore, the conclusions of

Dr. Toomey are not new. Claimant provided both medical and oral testimony that she would have difficulty running on a regular basis and that she requires the use of orthotics. Consequently, reconsideration of this claim on the basis of this new evidence would not produce a different decision by the Commission.

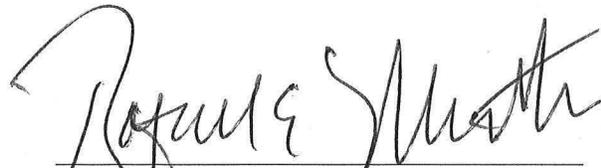
Therefore, for the reasons discussed above, the Commission finds that claimant's petition to reopen her claim fails to satisfy the Commission's regulations.

Accordingly, it is ORDERED that the request for reopening of this claim for further consideration be and it is hereby dismissed and, therefore, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed.

Dated at Washington, DC, January 8, 2013
and entered as the Order of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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Counsel for Claimant:

Charles S. Sims, Esq.
Proskauer Rose LLP

Oral hearing held on June 20, 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. This 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 March 15, 2012, the Commission denied the present claim, on the grounds that the claimant had not met her burden of proving that the limitations of her major life activities and/or the disfigurement to her outward appearance were significant enough so as to qualify her for additional compensation.

On April 5, 2012, the claimant filed a "Notice of Objection" requesting an oral hearing. By letter dated April 11, 2012 the Commission requested that claimant submit any additional evidence that she wished it to consider in support of her objection. In response, under cover of letter dated May 30, 2012, the claimant submitted medical reports from two doctors, Tony P. Lopez, M.D. and Charles N. Rudolph, M.D., dated May 28, 2012 and May 26, 2012, respectively. The oral hearing was held on June 20, 2012, during which both claimant and her husband, 5 U.S.C. § 552(b)(6) testified. At the oral hearing, the Commission stated that it would allow claimant additional time to obtain further evidence to support Dr. Lopez's statement dated May 28, 2012, referred to above, as well as other records of examination and/or treatment such as the gait analysis referenced by claimant at the hearing. However, no further documents have been submitted by the claimant since the hearing.

DISCUSSION

As noted in the Commission's Proposed Decision, 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 at ¶ 6.

Claimant, in her Notice of Objection, argued that the Commission 1) applied an erroneous standard in adjudicating her claim; 2) erroneously evaluated her injuries in

comparison to injuries suffered by other victims of the hijacking; 3) erroneously focused on the present-day physical effects of her injuries and improperly discounted the severity of the injuries at the time they occurred and thereafter; 4) erroneously concluded that the present-day physical effects of her injuries are not severe and do not limit her from engaging in any of her major life activities; 5) erroneously failed to consider the permanent scarring that resulted from her injuries; and 6) erroneously failed to consider the severe and permanent emotional and psychological effects she suffered as a result of the hijacking and her injuries. Claimant, during the oral hearing, also argued that the pain and limitations from which she now suffers will increase over time as the effects of her injuries continue to worsen over time.

At the oral hearing, claimant's counsel disputed the standard adopted by the Commission under Category D noting that the January Referral directs the Commission to award compensation based on the severity of an injury rather than compensating only the most severe injuries. However, claimant's counsel did acknowledge that an analysis of the relative severity of injuries under Category D was necessary.

The claimant, in her testimony at the hearing, described the ordeal that she and the other passengers endured, including the facts surrounding her escape from the aircraft, treatment of her injuries and the lasting effects of the attack on her life. Claimant testified that she "ha[s] been in pain every single day since the hijacking, in varying degrees based on climate and pregnancy, travel, exercise"; and that over the years she has learned "what [she] could not do and [she] learned that being on [her] feet all day wasn't going to work." She further testified that, in high school, she had to "g[i]ve up soccer and track...because[she] could no longer run or kick a ball"; that "this injury was the end

of [her] physical education”; that now she does not “do as many things with [her] children as [she] would like to do and [they] don’t do the things together that she would like to do” such as go to the beach, the zoo, ride bikes, and vacations; that she “stumble[s] weekly and fall[s] monthly”; and that although she would have liked to have had more children the pain was too great. With regard to her physical condition, claimant testified that she has hip and knee pain regularly because she puts 70% of her weight on her left foot and only 30% on her right foot on a constant basis, resulting in uneven use of her hips and pelvis and that this has caused a separated pelvis during pregnancy. Claimant further testified that she has been told that she can expect a hip replacement in the future. In addition, claimant testified that she has received physical therapy on a bi-monthly or weekly basis, for approximately twelve years—consisting of pain minimization and manipulation—and that she saw a personal trainer once or twice per week for ten or eleven years.

Claimant’s husband also testified at the hearing that “the extent to which [claimant] can participate in these activities has gone down substantially over the last decade.” For example, claimant’s husband elaborated that claimant is unable to go to the beach as much as she used to and that whenever they do activities that require a lot of walking claimant “ends up in a lot of pain and more stumbly.”

The medical evidence submitted in support of this claim consists of a previously submitted opinion from a Robert H. George, D.C., and a statement from a Jay Hoehn, claimant’s fitness trainer, as well as recently submitted medical reports from doctors Lopez and Rudolph. In the medical report from Dr. Lopez dated May 28, 2012, Dr. Lopez does not appear to make any independent findings; rather, after noting that the

claimant is a long-term patient, he merely recites what claimant had herself stated in her various statements to the Commission. The report from a Dr. Rudolph dated May 26, 2012, concludes that claimant should limit “her impact loading exercises to the right lower extremity.”

Analysis

As noted above, the Commission provided an opportunity, during the oral hearing, for the claimant to submit further evidence, as summarized by claimant’s counsel, “to build a record more in examination than client report.” While it is understandable that older records created by physicians that no longer treat the claimant may be unavailable, the records of Dr. Lopez—who, according to the claimant’s testimony, has treated her for approximately the last 20 years—should certainly be available. However, the claimant has failed to submit any additional records (as distinct from opinion), thus leaving the Commission with a record consisting mostly of the claimant’s own account of injuries with very little evidence of independent findings and conclusions of medical professionals.

As to claimant’s objections to the Commission’s Proposed Decision, the Commission has considered each of the objections and makes the following findings. First, regarding the standard to be applied in this claim, the claimant argues that while a comparative standard for compensation may be appropriate under Category D, the standard should not be limited to those most severely injured.

In determining its standard under Category D, the Commission determined that based on its knowledge of the universe of claims, the relatively low threshold for compensable injuries under the December Referral, and the exceptionally to

extraordinarily high compensation awarded under the December Referral—compared to other claims programs—eligible claimants in this program have thus far, for the most part, been adequately compensated. On this basis the Commission concluded, and remains convinced, that only the most severe injuries will constitute a special circumstance warranting additional compensation under Category D.

Next, claimant argues that the Commission improperly considered the severity of her injuries and impairments both at the time of the incident and at the present time. In this regard, claimant testified that the pain and limitations she currently suffers from will worsen over time as the effects of her injuries become progressively worse.

The Commission has reviewed all the evidence before it, including claimant's written and oral testimony along with the oral testimony of claimant's husband, and the opinions, statements and reports of each of the health care professionals submitted by the claimant. The evidence reveals that claimant required treatment at the time of the incident, including foot surgery, and that she has experienced and continues to experience some level of pain and limitation as described above. This evidence is, however, insufficient to warrant a finding that the severity of claimant's injury including all the facts and circumstances related thereto is particularly more severe—or "special"—as compared with those injuries suffered by other claimants in the Libya program. Further, the medical records do not support claimant's assertions that the pain and limitations which she assertedly endures now will become progressively worse over time. In fact, the only record containing a prognosis for claimant is that of Dr. Wenger—the surgeon who removed the shrapnel from claimant's foot—who in his report dated February 29, 1988, states that claimant's "condition should improve with time." Accordingly, while

the Commission recognizes the impact that claimant's injury has had on her life, it considers the injury and the impacts therefrom to have been included in its award of \$3 million under the December Referral.

Furthermore, claimant argues that the Commission failed to consider the permanent scarring that resulted from her injuries. However, the Commission notes that no evidence has been submitted by claimant to support her claim on this point and, therefore, there is no basis upon which the Commission could consider such a claim.

Finally, the claimant argues that the Commission failed to consider the severe and permanent emotional and psychological effects she suffered as a result of the hijacking and her injuries. On this point, the Commission determined in its Proposed Decision that the injury referred to under Category D is the same injury that was compensated under the December Referral and, further, that under the December Referral compensation was limited to claims for physical, not psychological, injury. The claimant has failed to submit any argument or evidence establishing that the Commission's determination was in error. Accordingly, while the Commission recognizes that the claimant has suffered significant emotional and psychological effects as a result of the hijacking, it cannot take such factors into consideration in its determination of the severity of claimant's physical injury under Category D.

CONCLUSION

For the reasons set forth above, the Commission remains unpersuaded that the severity of the injury in this claim rises to the level of a special circumstance warranting additional compensation under Category D. The Commission is deeply sympathetic to the claimant for the ordeal she endured, and the losses she suffered, during that horrific

event. Nonetheless, the Commission is constrained to conclude 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, October 26, 2012
and entered as the Final Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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Claim No. LIB-II-175

Decision No. LIB-II-139

Counsel for Claimant:

Charles S. Sims, Esq.
Proskauer Rose LLP

PROPOSED 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.

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 D. According to the January Referral, Category D 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.

Id. at ¶ 6. Attachment 1 to the January Referral lists the suits 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 January 12, 2010, the Commission adjudicated claimant's physical injury claim under the December Referral. In its decision, the Commission determined that the claimant was injured as a result of being struck by shrapnel in her right foot. The Commission concluded that the resulting injuries—consisting of shrapnel wounds requiring surgical intervention—met the Commission's standard for physical injury and, consequently, 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-023, Decision No. LIB-I-033 (2010) (entered as Final on February 24, 2010).

BASIS OF THE PRESENT CLAIM

On July 7, 2010, the Commission received from claimant a completed Statement of Claim in which she asserts a claim for additional compensation under Category D of the January Referral, along with exhibits supporting the elements of her claim, including evidence of her U.S. nationality, her receipt of an award under the December Referral, and the extent of her injuries. Specifically, claimant asserts that the “severity of [her] injuries, both at the time and today, are special circumstances warranting additional compensation under Category D.” The evidence submitted includes claimant's statements and medical records indicating the treatment received by claimant for her injuries.

DISCUSSION

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 time 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 the category 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 finds 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*, 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, 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

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

* 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 her Category D claim for additional compensation, claimant relies on her declaration, her supplemental declaration, the opinion of a Robert H. George, D.C., and a statement from a Jay Hoehn. In her declarations, claimant asserts that “[a]lthough [she] received limited treatment...in Karachi, [her] foot did not heal properly and became infected,” and that upon her return to the United States, additional treatment was necessary including a course of antibiotics and “surgery to remove some of the shrapnel that was still embedded in [her] foot.” Further, she asserts that “it is now difficult for my foot to support long periods of running” therefore she “cannot run for exercise,” and when she walks she “put[s] more weight on [her] left foot than on [her] right,” which “has resulted in pain in [her] hips and knees.” In addition, she asserts that she receives “physical therapy on a regular and frequent basis ...in order to strengthen [her] foot...as often as twice a week.” The claimant also asserts that she has suffered psychological trauma due not only to the incident itself but also the loss of her mother as a result of the incident.

In Mr. George's opinion dated October 20, 2009, he states that claimant suffers “pain...with movement of the ankle joint...hyper-mobility of her ankle...[and] pain upon palpation on the dorsum of her foot especially at the distal portion of her third metatarsal.” He further states that “she experiences pain with weather changes, walking on uneven surfaces, and had acute pain during her four pregnancies.” Finally, Mr. Hoehn, claimant's fitness trainer, states in his statement dated September 22, 2009 that “he has observed

obvious and ongoing limitations of strength and coordination on the right side of [claimant's] body.”

With regard to the claim of psychological trauma suffered because of the hijacking, the Commission notes its finding in *Claim of* 5 U.S.C. §552(b)(6) 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 shrapnel wound to the claimant’s right foot, 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* 5 U.S.C. §552(b)(6) ; Claim No. LIB-I-033, Decision No. LIB-I-046 (2011) (Proposed Decision); *Claim of* 5 U.S.C. §552(b)(6) ; Claim No. LIB-I-041, Decision No. LIB-I-030 (2010). For these reasons, claimant’s request for additional compensation for psychological trauma is rejected.

Concerning that portion of the claim for additional compensation based on the physical injury suffered by the claimant, considering the totality of the evidence submitted, the Commission is not persuaded that the severity of the injury to claimant’s foot is sufficient so as to qualify for additional compensation under Category D, that is, beyond the \$3 million already awarded. In this regard, the Commission notes that the injury has not required significant hospitalization of the claimant. As to claimant’s assertions of physical limitations associated with her injury, it appears from the evidence that while claimant experiences pain 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 limitations asserted by claimant do not amount to a substantial impairment so as to warrant additional compensation.

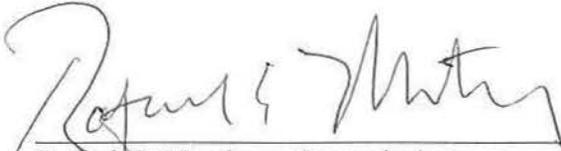
Consequently, the Commission concludes that the severity of the injury in this claim does not rise to the level of a special circumstance warranting additional compensation under Category D, beyond its award of \$3 million under the December Referral.

Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, March 15, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, 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).