



him to the point of unconsciousness during a forced march from Fena to a camp at Manenggon, where he was subsequently interned.

Although Claimant was not among them, several Guam residents received compensation from land and claims commissions established under the Guam Meritorious Claims Act (“GMCA”),<sup>2</sup> which was enacted on November 15, 1945, and provided compensation to residents of Guam for personal injury, death, and property loss sustained in Guam as a result of or incident to hostilities or hostile occupation, and/or the noncombat activities of the U.S. armed forces. The implementation and administration of the GMCA was the subject of a review conducted by the Guam War Claims Review Commission (“GWCRC”), which was established by a 2002 act<sup>3</sup> with the same title and was tasked with assessing the “effectiveness of [the GMCA] in addressing the war claims of American nationals residing on Guam between December 8, 1941, and July 21, 1944” and “[advising] on any additional compensation . . . necessary to compensate the people of Guam for death, personal injury, forced labor, forced march, and internment.”<sup>4</sup> In June 2004, the GWCRC issued a report concluding that, in some respects, there was a lack of parity of war claims paid to the residents of Guam under the GMCA compared with awards that claimants who suffered similar injuries received under the War Claims Act and other laws providing compensation for U.S. nationals who were killed or injured as a result of an invasion or occupation by the Japanese Imperial forces during World War II.<sup>5</sup> The GWCRC thus recommended that Congress authorize additional funding to provide compensation to

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<sup>2</sup> An Act: For the relief of the residents of Guam through the settlement of meritorious claims, ch. 483, Pub. L. 79-224, 59 Stat. 582 (1945).

<sup>3</sup> Guam War Claims Review Commission Act, Pub. L. 107-333, 116 Stat. 2873 (2002).

<sup>4</sup> *Id.* § 5(1), (5).

<sup>5</sup> *See* Guam War Claims Rev. Comm’n, Rep. on the Implementation of the Guam Meritorious Claims Act of 1945, at 77-78 (2004).

residents of Guam for claims for death, rape, personal injury, forced labor, forced march, and internment (including hiding to avoid capture).<sup>6</sup>

On December 23, 2016, President Obama signed into law the Guam World War II Loyalty Recognition Act, which established a supplemental war claims compensation program for claims arising from the attack and occupation of Guam by Imperial Japanese military forces during World War II. The Act recognizes two categories of eligible claimants: “compensable Guam decedent” and “compensable Guam victim.”<sup>7</sup> The Act defines a “compensable Guam victim,” which is the category that applies to this claim, as

an individual who is not deceased as of the date of the enactment of this Act and who is determined . . . to have suffered, as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II, or incident to the liberation of Guam by United States military forces, any of the following:

(A) Rape or severe personal injury (such as loss of a limb, dismemberment, or paralysis).

(B) Forced labor or a personal injury not under subparagraph (A) (such as disfigurement, scarring, or burns).

(C) Forced march, internment, or hiding to evade internment.<sup>8</sup>

On June 20, 2017, the Commission published notice in the *Federal Register* announcing the commencement of a program to adjudicate claims for compensation under the Guam World War II Loyalty Recognition Act.<sup>9</sup>

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<sup>6</sup> *See id.* at 80.

<sup>7</sup> Guam World War II Loyalty Recognition Act, Pub. L. 114-328, § 1704(c)(1)-(2), 130 Stat. 2645 (2016).

<sup>8</sup> *Id.* § 1704(c)(2).

<sup>9</sup> Notice of Commencement of Claims Adjudication Program and of Deadline for Filing of Claims, 82 Fed. Reg. 28,093 (June 20, 2017).

## DISCUSSION

As noted above, the Guam World War II Loyalty Recognition Act authorizes the Commission to award compensation to “compensable Guam victims,” which the Act defines as limited to individuals who (1) were alive on December 23, 2016, and (2) are determined to have suffered any of the following: rape, severe personal injury, personal injury, forced labor, forced march, internment, and hiding to evade internment.<sup>10</sup>

### *1. Claimant Living on December 23, 2016*

Claimant has submitted sufficient evidence to establish that he was living on December 23, 2016. He has provided a sworn and notarized claim form that he signed after the Commission published notice of the program’s commencement on June 20, 2017. Further, our review of death records from the Social Security Administration and other databases has yielded no evidence that Claimant was not living on December 23, 2016. Therefore, Claimant meets this element of his claim.

### *2. Claimant Suffered an Injury Compensable Under the GLRA*

Claimant asserts that he suffered five injuries recognized under the Act: forced labor, personal injury, forced march, internment, and hiding to evade internment.<sup>11</sup> The alleged injuries fall within separate categories of Section 1704(a)(1). Forced labor and personal injury fall within Section 1704(a)(1)(B) (“Category B”) and are compensable at a higher rate than the other alleged injuries, which fall within Section 1704(a)(1)(C) (“Category C”).<sup>12</sup> Under the Act, however, a claimant may be compensated only under a single category.<sup>13</sup> Thus a claimant who establishes entitlement to compensation for forced

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<sup>10</sup> See Guam World War II Loyalty Recognition Act §§ 1704(a), 1704(c)(2), 1705(a)(1).

<sup>11</sup> See *id.* §§ 1704(a)(1)(B)-(C), 1704(c)(2).

<sup>12</sup> See *id.*

<sup>13</sup> See *id.* § 1704(a)(1).

labor or personal injury (Category B injuries) is not eligible for additional compensation for forced march, internment, or hiding to evade internment (Category C injuries). We thus consider first whether Claimant suffered forced labor or a personal injury within the meaning of the Act.

*A. Forced Labor and Personal Injury*

*Factual Backdrop to Claimant's Allegations*

Forced Labor: Immediately after Japan occupied Guam on December 10, 1941, Imperial Japanese forces began to conscript residents of Guam as labor for various tasks to support the new military government. The first conscripts were members of the Insular Guard, who were forced to work as field workers and stevedores at Apra Harbor, and several trained nurses.<sup>14</sup> In 1942, the Japanese military government imposed additional labor requirements. Men, women, and children were mobilized for farming on large plantations and on small holdings allocated for communal use, while men and women worked in airfield construction, mining, fishing, industrial factories, or for the military government.<sup>15</sup> To ensure that targets for labor and food production were met, Japanese officials assigned daily worker quotas and appointed local leaders in Hagåtña, Barrigada, Merizo, and other villages to oversee the supply of labor.<sup>16</sup> These leaders, who by all

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<sup>14</sup> See Russell Apple, *Two Invasions and Three Military Occupations* 30 (1980); Robert Rogers, *Destiny's Landfall: A History of Guam* 170 (1995).

<sup>15</sup> See Pedro Sanchez, *Guam 1941-1945 Wartime Occupation & Liberation*, 47 (1984); Tony Palomo, *An Island in Agony* 123 (1984); Wakako Higuchi, *The Japanese Administration of Guam 1941-1944*, 97, 102, 111, 113 (2003).

<sup>16</sup> Apple, *supra* note 14, at 35-36; Sanchez, *supra* note 15, at 46-47; Rogers, *supra* note 14, at 172.

accounts served involuntarily, were frequently beaten if they failed to produce the assigned quota of manpower.<sup>17</sup> Absentee workers were treated similarly.<sup>18</sup>

Schoolchildren were not exempt from these requirements.<sup>19</sup> In schools established by the military government, which were compulsory for children seven years of age and older,<sup>20</sup> “work gradually supplanted learning” as Japan’s campaign in the Pacific faltered.<sup>21</sup> Guam’s schoolchildren “planted corn, gathered seaweed and sea slugs, picked ferns for vegetables, gathered mushrooms and fruit, made coconut oil, juiced papaya, stockpiled coconut husks, and gathered wood to fuel the Agana power plant, helped clear vegetation and rocks from the Orote airfield, and eventually became full-time labor gangs.”<sup>22</sup> After U.S. carrier planes began to bomb Guam in 1944, students “dug foxholes near their schools, in the villages, and on the ranches.”<sup>23</sup>

Although the number of Chamorros compelled to work had swelled to at least 9,994 by the end of 1943,<sup>24</sup> this pool of labor was not sufficient to satisfy the Japanese military government’s demand, which accelerated after thousands of Japanese soldiers returned to defend Guam in March 1944.<sup>25</sup> Quotas for agricultural production increased dramatically, and all women, men, and children over 12, were conscripted for labor.<sup>26</sup> As was the case previously, the military government assigned women and girls to work in the fields.<sup>27</sup> Men and boys, however, were organized into gangs that constructed airfields, roads, and other

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<sup>17</sup> See Apple, *supra* note 14, at 35-36; Palomo, *supra* note 15, at 123-24.

<sup>18</sup> See Apple, *supra* note 14, at 36.

<sup>19</sup> See Department of the Navy, *U.S. Navy Report on Guam 1899-1950*, at 10 (1951).

<sup>20</sup> See Richard Lowe, *Problems in Paradise* 287 (1967).

<sup>21</sup> Apple, *supra* note 14, at 33.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See Higuchi, *supra* note 15, at 115.

<sup>25</sup> See Apple, *supra* note 14, at 39; Palomo, *supra* note 15, at 163; Sanchez, *supra* note 15, at 47; Rogers, *supra* note 14, at 175-76.

<sup>26</sup> See Apple, *supra* note 14, at 39-40; Rogers, *supra* note 14, at 175-76.

<sup>27</sup> See Apple, *supra* note 14, at 39.

defensive installations or transported equipment and munitions for the Imperial Japanese forces.<sup>28</sup> They were, in essence, “slave laborers, working sometimes twenty-four hours at a stretch” without compensation and with only a “bare subsistence ration of food.”<sup>29</sup> An “unknown number . . . were killed or injured” after being hit by bombs and gunfire or assaulted by members of the Imperial Japanese forces.<sup>30</sup> Many were forced to work until United States military forces liberated Guam: the last labor gang was reportedly released only after Japanese army commander Hideyoshi Obata died on or around August 11, 1944.<sup>31</sup>

Personal Injury: Personal injuries sustained by residents of Guam during the war are described in public laws detailing appropriations made for personal injury claims under the GMCA.<sup>32</sup> The injuries set forth in these records fall into three categories. First, many Guam residents were injured during combat operations in 1941, when Japan attacked Guam, or in 1944, when United States military forces liberated the island.<sup>33</sup> These individuals were typically struck by gunfire, bombs, shrapnel, grenades, or other ordnance. Second, several Guamanians sustained injuries after being assaulted by Japanese officials during the occupation.<sup>34</sup> While the most common injuries in this category were caused by beatings administered by Japanese officials, some claims were brought by Guamanians who were bayoneted, clubbed, and/or stabbed.<sup>35</sup> The third category consists of accidental injuries, typically sustained during non-combat operations. For example, a number of

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<sup>28</sup> *See id.* at 40; Higuchi, *supra* note 15, at 122.

<sup>29</sup> Rogers, *supra* note 14, at 176.

<sup>30</sup> Apple, *supra* note 14, at 40.

<sup>31</sup> *See* Higuchi, *supra* note 15, at 122.

<sup>32</sup> *See, e.g.*, H.R. Doc. No. 349 (1947).

<sup>33</sup> *See id.* at 14-15.

<sup>34</sup> *See id.*

<sup>35</sup> *See id.* at 17, 36, 43.

Guamanians were injured in vehicular accidents that were caused by Imperial Japanese or U.S. forces.<sup>36</sup>

*Factual Allegations Specific to Claimant*

Claimant asserts that he was a Guam resident on December 8, 1941, when Japan attacked the island. Claimant states that he has a visible scar on his right thumb where he was struck by a bullet from a Japanese airplane that strafed Guam on the date of the attack. Claimant further states that, in July 1944, he was beaten to the point of unconsciousness by Imperial Japanese forces because he refused to hand over his machete during a forced march from Fena to Manenggon.

Claimant also alleges that between December 1941 and July 21, 1944, he was “forced to work” for the Imperial Japanese forces as a field worker on a rice plantation, as an assistant heavy equipment mechanic at the Orote point airfield construction site, and as an equipment carrier.

*Supporting Evidence*

Claimant has submitted a sworn Statement of Claim, including a notarized affidavit, that describes the circumstances of his injuries. The Commission also takes notice of several sources that provide background about the Imperial Japanese Army’s occupation of Guam during World War II, including many that relate specifically to the circumstances faced by Guamanians who were residents of the island at that time. These sources include historical accounts of Japan’s capture and occupation of Guam, newspaper articles, memoranda from officials in the U.S. Navy, public laws detailing appropriations made for personal injury and death claims under the GMCA, a June 2004 report issued by the

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<sup>36</sup> See *id.* at 32-33.

GWCRC, and testimony from survivors of the occupation who participated in hearings held by the GWCRC on Guam in December 2003.

*Legal Standard*

To be eligible for compensation for personal injury and/or forced labor under the GLRA, a claimant must establish that he or she suffered those injuries “as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II, or incident to the liberation of Guam by United States military forces.”<sup>37</sup>

Forced labor: To determine the standard for establishing the injury of “forced labor” under the GLRA, we look to the Micronesian Claims Commission’s (“MCC”) treatment of the injury of “forced labor” under the Micronesian Claims Act of 1971 (“MCA”), which, as the sole domestic statute interpreted as authorizing civilian claims for forced labor arising from World War II, is particularly relevant for our determination here.<sup>38</sup>

The MCA authorized compensation for “Micronesian inhabitants of the Trust Territory of the Pacific Islands who suffered loss of life, physical injury, and property damage.”<sup>39</sup> The MCC determined that claims for forced labor were compensable under the Act as property damages or losses.<sup>40</sup> In *Claim of Daniel R. Ogumoro*, its precedent decision on forced labor, the MCC used the term to refer to work performed “under duress and without compensation on the construction of military installations or the production of

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<sup>37</sup> Guam World War II Loyalty Recognition Act, Pub. L. 114-328, § 1704(c)(2), 130 Stat. 2642, 2645 (2016).

<sup>38</sup> See Guam War Claims Rev. Comm’n, Rep. on the Implementation of the Guam Meritorious Claims Act of 1945, at 54 (2004). The GMCA did not authorize claims for forced labor or related injuries.

<sup>39</sup> Micronesian Claims Act of 1971, Pub. L. 92-39, § 104(a), 85 Stat. 94 (1971).

<sup>40</sup> See *In the Matter of the Claim of Daniel R. Ogumoro*, Claim No. 2513-B, Decision No. 140, 1973 FCSC Ann. Rep. at 99-100. The Micronesian Claims Commission was “under the control and direction of the Chairman of the Foreign Claims Settlement Commission.” Micronesian Claims Act of 1971 § 103(a).

food for the Government of Japan.”<sup>41</sup> While the MCC did not explicitly articulate a standard for forced labor, the MCC concluded that Mr. Ogumoro had established the injury because he “was forced to work by the Government of Japan on the construction of an airfield in Saipan, Mariana Islands.”<sup>42</sup> In a 1973 report that provided commentary on the MCC’s decision in *Claim of Daniel R. Ogumoro*, the Commission noted that the “basis” for the estimated 1,800 to 2,000 forced labor claims brought under the MCA was “an abundance of evidence” that strongly corroborated the claimants’ contentions “that they were forceably taken away from their homes to perform work on Japanese military or military-related projects without receiving compensation.”<sup>43</sup> Thus, the common element in these claims is the use or threatened use of physical force to compel labor.

We therefore conclude that to establish the injury of “forced labor” under the GLRA, a claimant must show that he or she was compelled to perform labor by the use or threatened use of physical force.

Personal Injury: The definition of the term “personal injury” is set forth in regulations promulgated by the Commission on April 3, 2017, under Section 1704(c)(3) of the GLRA.<sup>44</sup> To establish a personal injury, a claimant must show that he or she suffered a “discernible injury (such as disfigurement, scarring, or burns) that is more serious than a superficial injury.”<sup>45</sup>

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<sup>41</sup> *Id.* at 99.

<sup>42</sup> *Id.*

<sup>43</sup> 1973 FCSC Ann. Rep. at 44.

<sup>44</sup> Guam World War II Loyalty Recognition Act, Pub. L. 114-328, § 1704(c)(3), 130 Stat. 2642, 2645 (2016); *See* 45 C.F.R. § 510.1 (2017).

<sup>45</sup> 45 C.F.R. § 510.1 (2017).

*Application of Standard to this Claim*

The GLRA provides that the Commission “shall treat a claim that is accompanied by an affidavit of an individual that attests to all material facts required for establishing the eligibility of such individual for payment . . . as establishing a prima facie case of the eligibility of the individual for such payment without the need for further documentation, except as the Commission may otherwise require.”<sup>46</sup> The Act further provides that “[s]uch material facts shall include . . . a detailed description of the injury or other circumstances supporting the claim involved.”<sup>47</sup> Thus, to determine whether Claimant has satisfied the standards for forced labor and personal injury in this program, we look to the account of his injuries set forth in the sworn affidavit attached to his claim form.

Forced labor: Claimant’s sworn affidavit stating that he was forced to work in rice and corn fields six days a week from 6 a.m. to 6 p.m. without compensation, as a mechanic on the construction of the Orote airfield, and as an equipment carrier for the Imperial Japanese forces between 1941 and 1944 sets forth all material facts required to establish forced labor under the GLRA and thus to establish a prima facie case that he was “compelled to perform labor by the use or threatened use of physical force” as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II. Claimant’s sworn statements are consistent with the evidence in the record, which shows that thousands of Guamanians of the same age or older were subjected to forced labor by Imperial Japanese forces during this period under the standard that applies in this program. As we note above, between 1941 and 1944, the Imperial Japanese forces conscripted thousands of Guamanians, including schoolchildren, for labor relating to

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<sup>46</sup> Guam World War II Loyalty Recognition Act § 1705(b)(9).

<sup>47</sup> *See id.*

farming and food production or the construction of airfields and other defensive installations. The Imperial Japanese forces administered beatings to both absentee workers and appointed leaders who were unable to satisfy quotas for food production or manpower. Thus, in the absence of rebutting evidence, Claimant's sworn statements averring that he was among the Guamanians who were forced to work in this manner are sufficient to establish that he was subjected to forced labor within the meaning of the GLRA.

Personal injury: Claimant's sworn affidavit states that he has a visible scar on his right thumb where he was struck by gunfire from a Japanese airplane on December 8, 1941. It also states that Imperial Japanese forces beat him to the point of unconsciousness on a forced march from Fena to Manenggon in July 1944. In the context of the personal injuries determined to be compensable under the GMCA and other statutes providing compensation for injuries arising from hostilities during World War II, Claimant's injuries are both discernible and more serious than superficial. Moreover, Claimant's visible scar is among the three types of injuries (disfigurement, scarring, burns) enumerated under the statute and regulations as an example of a personal injury within the scope of the GLRA. Claimant's affidavit thus sets forth all material facts required to make a prima facie case that he sustained a personal injury as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II. In the absence of rebutting evidence, Claimant's sworn affidavit is sufficient to establish that he suffered a personal injury within the meaning of the GLRA.

In sum, this claim meets the standards for forced labor and personal injury, and Claimant is thus entitled to compensation.

*B. Forced March, Internment and Hiding to Evade Internment*

Because Claimant has established that he suffered a personal injury and was subject

to forced labor, he is not eligible for additional compensation for forced march, internment, or hiding to evade internment.<sup>48</sup> We thus need not determine whether he also suffered any of those injuries.

### COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

Our determination in this regard is governed by the express terms of the GLRA. Specifically, the Act provides that a claimant who establishes a meritorious claim as a “compensable Guam victim” is entitled to an award that is based on the classification of his or her injury under the three categories of compensation set forth in Section 1704 of the GLRA.<sup>49</sup> Because Claimant has suffered forced labor and personal injury but has neither asserted nor established any of the injuries set forth in Section 1704(c)(2)(A) (rape and severe personal injury), he is entitled to a single payment of \$12,000.<sup>50</sup>

#### *Deductions in Payment*

Pursuant to the GLRA, the Commission is required to deduct, from a payment made to a compensable Guam victim or survivors of a compensable Guam decedent, amounts paid to such victim or survivors under the Guam Meritorious Claims Act of 1945, Public Law 79-224,<sup>51</sup> before the date of the enactment of the GLRA.<sup>52</sup> The evidence in the record, however, does not show that the United States Government has provided him any

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<sup>48</sup> *Id.* §§ 1704(a)(1)(C), 1704(c)(2)(B).

<sup>49</sup> *See id.* § 1704(a)(1)(A)-(C).

<sup>50</sup> *See id.* §§ 1704(a)(1)(B), 1704(c)(2)(A); Claim No. GUAM-0232, Decision No. GUAM-001, at 20-21 (holding that “Section 1704 also makes clear that a claimant who suffered multiple injuries is limited to a single payment of \$10,000, \$12,000, or \$15,000 that is determined by the category of compensation that applies to his or her most highly remunerated individual injury under the Act.”).

<sup>51</sup> *See* An Act: For the relief of the residents of Guam through the settlement of meritorious claims, ch. 483, Pub. L. 79-224, 59 Stat. 582 (1945).

<sup>52</sup> *See* Guam World War II Loyalty Recognition Act § 1705(b)(4).

compensation under the 1945 Act. Therefore, no deduction in payment will be made from Claimant's award.

In summary, Claimant is entitled to an award of \$12,000. This amount constitutes the entirety of the compensation to which Claimant is entitled under the GLRA.<sup>53</sup> The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under Section 1705 of the GLRA.<sup>54</sup>

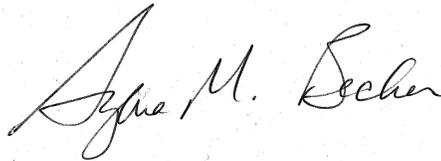
AWARD

Claimant is entitled to an award in the amount of \$12,000.

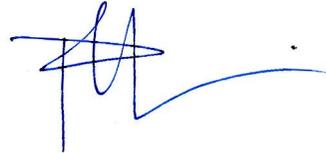
Dated at Washington, DC, February 28, 2019  
and entered as the Proposed Decision  
of the Commission.

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

**April 22, 2019**



Sylvia M. Becker, Commissioner



Patrick Hovakimian, 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), 510.3 (2018).

<sup>53</sup> Under the GLRA, interest is not available on payments made by the Commission under Section 1704. *Id.* § 1705(b)(5).

<sup>54</sup> *Id.* § 1705(b)(8).