

6-IA3-117

Wrongful

death ✓

iraqi civilian

- unit

- Any ~~IRAQI~~ Iraqi civ KIA

(b)(2)High

Signal -

(b)(2)High

TF 2-7

Planned Raid 31 KM
SE Tikrit

to detain IED cell member ✓



DEPARTMENT OF THE ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
HEADQUARTERS, 101ST AIRBORNE DIVISION (AIR ASSAULT)
OPERATION IRAQI FREEDOM, FOB SPEICHER
TIKRIT, IRAQ APO AE 09393

AFZB-JA-C

9 December 2005

MEMORANDUM OF OPINION

SUBJECT: Claim of (b)(6) 06-IA3-117

- 1. Identifying Data:** (b)(6)
- 2. Date and place the incident occurred giving rise to the claim:** The claim occurred on October 11, 2005 in Ber Ahmed, Iraq.
- 3. Amount of claim and date it was filed:** Claimant filed a claim for \$3,000 on 27 Nov. 2005.
- 4. Jurisdiction:** This request is presented for consideration under the provisions of the Foreign Claims Act, 10 USC Section 2734, as implemented by Chapter 10, Army Regulation 27-20. This claim was properly filed in a timely manner.
- 5. Facts:** The Claimant alleges that his brother, (b)(6), was killed during a CF cordon and search operation during the early morning hours of 11 October 2005. The claimant alleges that he and the deceased were attempting to enter their village on foot when CF forces began to fire. His brother was allegedly hit by gunfire and was killed. Neither of the men were allegedly carrying weapons. An American death certificate indicates that Iraqi army personnel took the decedant to FOB Bernstein where the deceased was dead on arrival. SIGACTS (b)(2)High confirmed a raid in the village in search of an IED cell member. SIGACTS reported that the raid proved unfruitful and mentions no civilian deaths.
- 6. Opinion:** Under AR 27-20, paragraph 10-3, Claims arising "directly or indirectly" from combat activities of the U.S. Armed Forces are not payable. AR 27-20 defines combat activities as, "Activities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in armed conflict, or in immediate preparation for impending armed conflict." Here, if the Claimant's testimony is true, then this claim is non-compensable because the death was incident to a combat operation.

CENTCOM 002349

7. **Recommendation:** The claim is denied.

(b)(6), (b)(3)

CPT, JA
Claims Judge Advocate

11 DEC



DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST BRIGADE, 3D INFANTRY DIVISION (FORWARD)
TASK FORCE LIBERTY, OPERATION IRAQI FREEDOM
FORWARD OPERATING BASE SPEICHER
APO AE 09393

DHFT-JA

MEMORANDUM FOR Claimant

SUBJECT: Claim Denial

1. This is in response to your claim against the United States Government. Your claim has been reviewed under the Foreign Claims Act, 10 U.S.C. 2734, as implemented by Army Regulation 27-20, Chapter 10. I regret to inform you that your claim has been denied.

2. Your claim has been denied for the following reasons:

- a) There is not enough evidence to prove your claim.
- b. The evidence shows that United States Forces did not cause the damage.
- c. The evidence shows that the damage was caused during combat.
- d. The evidence shows that the damage was caused by your own negligence or wrongdoing.
- e. The evidence shows that your claim was fraudulent.
- f. Other: _____

3. If this is the first time your claim has been viewed by this office, you may submit an appeal. This office must receive the appeal no later than 30 days after receipt of this message. The appeal must also contain additional evidence proving your claim. If the appeal is sent after 30 days has passed, or does not provided additional evidence, then the appeal will be denied.

4. POC is the Tikrit Claims Office at DNVTF (b)(2)High .

(b)(6)

CPT. FCC
Foreign Claims Commissioner

CENTCOM 002351

Claims Form

To: United States Army Foreign Claims Commission.

From: Name: _____ (b)(6) _____

POA/ATT: _____

Power of Attorney provided and interpreter approved: _____

→ Decedents: _____ (b)(6) _____

Hometown: Ben Ahmed Iraqi Resident: _____

My claim arose at: Ben Ahmed ~~(Town)~~ (Town) _____ ~~(City)~~ (City) _____ ~~(Country)~~ (Country)

My claim arose on: 11 OCT 05
Month Day Year

Proof of Ownership: N/A

Interpreter Approved: _____

Death Certificates (Name, Cause of Death, Age, and Time of Death Consistent with Claimant allegations): you - American death cert

Interpreter Approved: _____

Legal Expert Opinion: None

Interpreter Approved: _____

Witness Statement (Consistent?): N

Interpreter Approved: _____

Give a brief statement of the accident or incident on which the claim for damages to property or for personal injury is based. (Use back of this sheet if necessary.)

CF surrounded village at 6am, they came for bad guys.
C & Brother (deceased) were outside the village &
tried to re-enter when they were shot

C's brother treated at American hospital in Tuz

Name matches on the hospital report, so does the injury
locations. The decedent was dead on arrival

C was not carry a weapon when shot.

Evidence: American hospital report;

List in detail the amount of property damage and itemized expenses resulting from the property damage or personal injury: (Attach bills and receipts, if applicable.)

Item	Amount
Wrongful death	\$3,000

Total \$3,000

I was insured to the following extent against the damage or injuries I have sustained:

N/A

The name and address of my insurer (if any) is:

(Name) _____ (Address) _____

I claim as damages: (Indicate amount in U.S. dollars and local currency)
\$ 3,000 local _____

(b)(6)

(Signature of Claimant)

Subscribed before me this 27 day of NOV, 2005.

(b)(6), (b)(3) _____

(Signature) _____

From : (b)(6), (b)(3) @us.army.mil> ▶
Sent Friday, December 9, 2005 9:08 am
To (b)(6), (b)(3) @us.army.mil
Cc
Bcc
Subject Foreign Claims Inquiry: 11 October 2005

Sir,

I am a Claims Judge Advocate at FOB Speicher who is investigating a wrongful death claim of an Iraqi national on behalf of his deceased brother. The Claimant presented a death certificate for (b)(6) who was brought to FOB Berstein by the Iraqi Army in the morning of 11 October 2005. The Claimant alleges that Coalition Forces shot his brother without justification in the village of Ber Ahmed, a small village southeast of Tikrit. I'm trying to find out the truth as to what happened, specifically whether the circumstances of his death were either wrongful or negligent.

I found your name as the health care provider on the deceased's death certificate. Do you remember treating the deceased? The cause of death listed on the death certificate is "Fall intracranial injury, due to cervical injury." Not having medical training, I was hoping you could tell me whether or not the deceased came in with a gun shot wound, or whether his death was due to a fall, as noted on the death certificate. Although "fall" seem self explanatory, perhaps the head injury was on a consequence of falling on something after being shot. Was it your normal practice to annotate "Gun Shot Wound" on the death certificate when that was the cause of death?

The Claimant appears to be credible, and I would like to give a condolence payment to the deceased's family, but of course, I need to verify the incident and get some more information. Any information you could provide on this incident would be invaluable in my investigation.

Please contact me at this email address, or DSN (b)(2)High , VOIP (b)(2)High

Thank you for your assistance,

CPT (b)(6), (b)(3)
Claims Judge Advocate
101 Airborne Division (Air Assault)
FOB Speicher, Iraq

Page 9 redacted for the following reason:

foreign language

Valid for 1 day

CLAIMS

The following individual (s) _____

FOB ^{SOICHER} ~~Danner~~ to submit a claim at the following section _____

is MSC

(IBDE FSNCO / IO) at 829508, Government Bldg Tikrit.

request permission to enter the CIMICon

DTG 051127 POC for this note

//////////////////////////////////////END OF STATEMENT//////////////////////////////////////

CENTCOM 002356

HOSPITAL REPORT OF DEATH <small>FOR USE OF THIS FORM, SEE AR 4040; THE PROPONENT AGENCY'S OFFICE OF THE SURGEON GENERAL</small>		NAME AND LOCATION OF HOSPITAL			
<p style="text-align: center;"><i>Instructions - Medical Officer in attendance will:</i></p> <p>Prepare, in one copy only, items 1 through 10 and sign item 11. Print or type entries.</p>		<p style="text-align: center;"><i>Send form, without delay to the Registrar or Administrative Officer of the Day, for necessary action and for preparation of required number of copies.</i></p>			
SECTION A - ATTENDING MEDICAL OFFICER'S REPORT					
PERSONAL DATA					
<p>1. PATIENT DATA (Patient's ward plate will be used to imprint identifying data if available)</p> <p style="text-align: center;">(b)(6)</p> <p>Patient's name (Last, first, middle initial) Grade, Social Security Account No., Register Number and Ward Number</p>		<p>2. TIME OF DEATH (hour:day-month-year)</p> <p style="text-align: center;">0900 11 OCT 2005</p>	<p>3. MEDICAL EXAMINER/CORONER'S CASE</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>		
		<p>4. RELIGION</p> <p style="text-align: center;">Islam</p>	<p>5. CHAPLAIN NOTIFIED</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>		
		<p>6. NAME, ADDRESS AND RELATIONSHIP OF RELATIVE OR FRIEND PRESENT AT DEATH</p>			
CAUSE OF DEATH			APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH		
<p>7A. DISEASE OR CONDITION DIRECTLY LEADING TO DEATH (This does not mean the mode of injury, e.g., heart failure, asphyxia, etc. It means the disease, injury, or other action which caused death)</p>	<p>CUE TO (or as a consequence of)</p> <p style="text-align: center;">Fall intracranial injury</p>		<p style="text-align: center;">5 minutes</p>		
<p>7B. ANTECEDENT CAUSES (Mental conditions, if any, giving rise to the above cause, stating the underlying condition last)</p>	<p>DUE TO (or as a consequence of)</p> <p>(1) Cervical injury</p> <p>(2)</p>		<p style="text-align: center;">5 minutes</p>		
<p>8. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO THE DEATH, BUT NOT RELATED TO THE DISEASE OR CONDITION CAUSING IT</p> <p>a.</p> <p>b.</p>					
<p>9. DATE</p> <p style="text-align: center;">11 OCT 05</p>	<p>10. TYPED OR PRINTED NAME AND GRADE OF MEDICAL OFFICER</p> <p style="text-align: center;">(b)(6), (b)(3) <u>HAJ MC</u> (b)(6), (b)(3)</p>				
SECTION B - ADMINISTRATIVE ACTION					
TYPE OF ACTION	HOUR	DAY	MONTH	YEAR	INITIALS OF RESPONSIBLE
12. TELEGRAM TO NEXT OF KIN OR OTHER AUTHORIZED PERSON					
13. POST ADJUTANT GENERAL NOTIFIED					
14. IMMEDIATE CO OF DECEASED NOTIFIED					
15. INFORMATION OFFICE NOTIFIED					
16. POST MORTUARY OFFICER NOTIFIED					
17. RED CROSS NOTIFIED					
18. OTHER (Specify)					
19.					
SECTION C - RECORD OF AUTOPSY					
<p>20. AUTOPSY PERFORMED (If yes, give date and place)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>			<p>21. AUTOPSY CARRIED BY (Signature)</p>		
<p>22. PROVISIONAL PATHOLOGICAL FINDINGS</p>					
<p>23. DATE</p>	<p>24. TYPED NAME AND GRADE OF PHYSICIAN PERFORMING AUTOPSY</p>		<p>25. SIGNATURE OF PHYSICIAN PERFORMING AUTOPSY</p>		
<p>26. DATE</p>	<p>27. TYPED NAME AND GRADE OF REGISTRAR</p>		<p>28. SIGNATURE OF REGISTRAR</p>		

CERTIFICATE OF DEATH
For use of this form, see AR 150-8; the proponent agency is PMG.

INTERMENT SERIAL NUMBER

FROM:

2/278 OCT FOS Bancher APO AE 09324

TO:

~~Unknown~~ ~~Private~~

(b)(6)

(b)(6) GRADE C-3 SERVICE NUMBER

NATIONALITY POWER SERVED PLACE OF CAPTURE/INTERMENT AND DATE
Iraqi [redacted] Po Ahmed, Iraq 11 OCT 05

PLACE OF BIRTH DATE OF BIRTH

NAME, ADDRESS, AND RELATIONSHIP OF NEXT OF KIN FIRST NAME OF FATHER

PLACE OF DEATH DATE OF DEATH CAUSE OF DEATH
Po Ahmed, Iraq 11 OCT 05 Fall intercominal injury

PLACE OF BURIAL DATE OF BURIAL

IDENTIFICATION OF GRAVE

PERSONAL EFFECTS (To be filed in by Office of Deputy Chief of Staff for Personnel)
- RETAINED BY DETAINING POWER - FORWARDED WITH DEATH CERTIFICATE TO (Specify) - FORWARDED SEPARATELY TO (Specify)
The hospital via IFA

BRIEF DETAILS OF DEATH BURIAL BY PERSON WHO CARED FOR THE DECEASED DURING ILLNESS OR DURING LAST MOMENTS (Doctor, Nurse, Minister of Religion, Fellow Internee). IF CREATED, GIVE REASON. (If more space is required, continue on reverse side).

(b)(6), (b)(3)

DO NOT WRITE IN THIS SPACE CERTIFIED A TRUE COPY DATE SIGNATURE OF MEDICAL OFFICER SIGNATURE OF COMMANDING OFFICER WITNESSES SIGNATURE ADDRESS SIGNATURE ADDRESS