b)(3)(b)(6)

DEPARTMENT OF THE ARMY
1st Infantry Brigade Combat Team Command Judge Advocate
1st Infantry Brigade Combat Team
FOB Warrior, Kirkuk, Iraq, APO AE 09338

AFZS-LI-Z-JA 12 October 2007

MEMORANDUM OF OPINION

SUBJECT: Claim of (b)(6), 08-IH4-T009

1. Claimants name and address: (b)(6) Kirkuk, Iraq.

2. Incident date and place the incident occurred giving rise to the claim: Incident occurred on 12 October 2007 in Kirkuk, Iraq.

3. Amount of claim and filing date: Claimant filed a claim in the amount of $1.00 on 12 October 2007.

4. Chapter the claim was considered under and a brief description of the incident or of the issues raised by the claimant on reconsideration: Foreign Claims Act and Chapter 10, AR 27-20; claim filed for property damage.

5. Facts:

a. (b)(6) claims that his son was shot by Coalition Forces while they engaged potential Unknown Enemy forces that had detonated an Improvised Explosive Device. (b)(6) (b)(6) was killed during this incident.

b. There were sworn statements, a story board, and pictures included in the submitted claim.

c. The incident was verified by the unit.

6. Opinion:

a. In order to form a basis for a claim under the FCA, the incident must occur outside of the United States and arise from either non-combat activities of the U.S. Armed Forces or by negligent or wrongful acts of military members or civilian employees of the Armed Forces.

b. There is insufficient evidence to suggest that this incident arose out of the negligence and/or wrongful acts of the United States Armed Forces. Any appeal must be submitted within 30 days.

AFZS-LI-Z-JA
SUBJECT: Claim of (b)(6), 08-IH4-T009

7. Action: This claim is not payable under the FCA for the above mentioned reasons. Consequently this claim for $1.00 is denied.

(b)(3), b(6)

CPT, JA
Foreign Claims Commissioner

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Section 301; Title 5 USC Section 2951; E.O. 9397 dated November 22, 1943 *(SSN)*.
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your social security number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION	2. DATE *(YYYYMMDD)*	3. TIME	4. FILE NUMBER
FOB Warrior, Kirkuk, Iraq	2007/10/12	2030	

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
(b)(3), b(6)	(b)(3), b(6)	CPT

8. ORGANIZATION OR ADDRESS
HHC, 2-22 IN 1st BCT 10th MTN DIV

9.
I, CPT (b)(3), b(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On 12 October 2007 at 0700 I along with 1SG (3), b and Third Platoon Delta Company departed the Forward Operating Base Warrior. At approximately 0720 on (b)(2) High the convoy encountered an IED. The first vehicle (D31) was struck by the IED on the left side of the vehicle. As soon as the IED went off I called up a contact report to our company TOC and let them know that we would have casualties. As I was calling the report the next two trucks (D36 and D35) started firing. I called D36 and asked what they were shooting at. D36 said they were shooting a a man in black that was behind a bunker and was trying to exfil the site. After this report I ordered a cease fire. As soon as I ordered a cease fire the gunners stopped firing. We then started our CASEVAC procedures. After casualties were taken back to FOB Warrior and QRF arrived on scene I took dismounts out to clear the bunkers and ID the body that the scout weapons team located. I was suprised to find the body of a (b)(6) year old boy with a white shirt because all the reports I had recieved from my personnel were of a man in black. I found a local boy nearby and asked him to go get the Muktar of the village. The Muktar of the village came and we informed him of the deceased boy and asked if he could get the mother and others to help claim the body. The mother claimed the body and 4-5 others helped get the body back to the village. I then handed the IED site over to B26 (QRF patrol leader) and returned to FOB Warrior.

Nothing Follows

(b)(3), b(6)

(b)(3), b(6)

(b)(3), b(6)

(b)(3), b(6)

10. EXHIBIT	11. INITIALS OF (b)(3), b(6) (b)(6)	PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF ____ AT ____ DATED ____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE BE INDICATED.

STATEMENT OF CPT (b)(3), b(6) TAKEN AT 2030 DATED 2007/10/12

9. STATEMENT *(Continued)*

Nothing Follows

(b)(3), b(6)

(b)(3), b(6)

(b)(3), b(6)

(b)(3), b(6)

AFFIDAVIT

I, CPT (b)(3), b(6), HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIO CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREEL THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLU

(b)(3), b(6)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 12th day of October, 2007 at FOB Warrior

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATE (b)(3), b(6)

PAGE 2 OF 2 PAGES

PAGE 3, DA FORM 2823, DEC 1998

APD PE v1.01

SWORN STATEMENT

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1. LOCATION	2. DATE *(YYYYMMDD)*	3. TIME	4. FILE NUMBER
FOB Warrior	2007 1612	1345	

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
(b)(3), b(6)	(b)(3), b(6)	O-2

8. ORGANIZATION OR ADDRESS
3/0/2-22 IN BN

9.
I, (b)(3), b(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

At 0700 we left FOB Warrior out of gate 5. Approximately 10 minutes later my first truck (D31) hit a pressure wire and 2 mortar rounds on (b)(2) High My gunner (D36) said he had PID on two individuals behind a bunker in the prone and after the IED exploded both began to run in opposite directions. I gave the order to engage an individual wearing a ~~black~~ dark colored robe. Once that individual went down I called cease fire because we did not have any PID any other targets. We then pulled our truck up to D31 which was already receiving aid from D35 and H6. I tried to help provide aid to D31's gunner (CPL (b)(3), b(6)) who had received shrapnel to his lower left back. Simultaneously, D35 started to take SPC (b)(3), b(6) who ~~was injured To~~

10. EXHIBIT | INITIALS OF PERSON MAKING STATEMENT (b)(3), b(6) | PAGE 1 OF 3 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF (b)(3), b(6) TAKEN AT 1345 DATED 12 Oct 07

9. STATEMENT *(Continued)*

received injuries to his face to EMEDS. After applying aid to CPL (b)(3), b(6) I applied aid to SPC (b)(3), b(6) who received shrapnel to his left forearm. I then tried to talk Avenger 11 onto the individuals we engaged. After several moments I told HQ (CPT (b)(3), b(6)) I needed to CASEVAC CPL (b)(3), b(6) and SPC (b)(3), b(6) to EMEDS. He took control of my patrol and I then went immediately to EMEDS.

We also tried to get PVT (b)(3), b(6) out of D31 but the truck was already on fire, and then the (b)(2)High rounds began to go off so we had to move ourselves and our casualties to cover.

Furthermore, I gave the go-ahead to engage the target because for some reason today there was no one out of their houses which they usually are moving about. Also, the target we engaged

INITIALS (b)(3), b(6) PAGE 2 OF 5 PAGES

.ATEMENT OF (b)(3), b(6) TAKEN AT 1345 DATED 12 Oct 07

9. STATEMENT *(Continued)*

was approximately (b)(2)High to my 9 o'clock. hiding behind a bunker in an open field; and once the IED exploded the target started to run. The IED blast was not that big so the individual running could not have felt he was in any danger.

AFFIDAVIT

I, (b)(3), b(6), HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(b)(3), b(6)
(Signature of Person Making Statement)

(b)(3), b(6)

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 12 day of Oct 07 at 1345

(b)(3), b(6)
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

(b)(3), b(6)
(Typed Name of Person Administering Oath)

(b)(3)(b)(6)
(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT (b)(3), b(6)

PAGE 7 OF 3 PAGES

SWORN STATEMENT

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DISCLOSURE: Disclosure of your social security number is voluntary.

1. LOCATION	2. DATE *(YYYYMMDD)*	3. TIME	4. FILE NUMBER
Kirkuk Iraq	2007/10/12	2040 hrs	

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
(b)(3), b(6)		E-8 / 1SG

8. ORGANIZATION OR ADDRESS
HHC 2-22 IN

9.
I, 1SG (b)(3), b(6), WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

On the morning of 12 October 2007 at 0700 I along with CPT (b)(3), b(6) and Third Platoon Delta Company led by 1LT (b)(3), b(6) departed the Forward Operating Base Warrior. At approximately 0730 and (b)(2)High from the FOB the convoy encountered an IED along the route. The Vehicle in the lead was struck with the full force of the blast as it traveled under the powerlines that crossed the road.
On seeing the blast I started looking for a trigger man on the left side of the road. I saw a man dressed in black stand up and run away. The man was several hundred meters south of the convoy and road. The man was engaged with small arms fire from two vehicles at wich time I saw the man fall or kneel down.

After the man went down a signal to cease fire was passed back from the commanders vehicle.

After the cease fire my vehicle went forward to assess the situation. Once forward my vehicle stopped beside the lead vehicle where SGT (b)(3), b(was trying to get the other wounded soldiers out of the burning vehicle. The vehicle was on fire due to the fuel leaking out of the vehicle and the fuel cans strapped to its rear. Within two or three minutes all Soldiers were removed from the vehicle except PVT (b)(3), b(6 PVT (b)(3), b(6 door was jammed from the explosion. We tried to extinguish the fire with fire extinguishers and dirt until the fire bacame too hot and the fumes too noxious to breath. Once ammunition in the vehicle started cooking off we had to stop and move a safe distance away. PVT (b)(3), b(6 was deceased in the right rear seat due to the massive head trauma incurred in the IED blast.

Once fire rescue arrived some 30 minutes later the fire was extinguished and cooled off then PVT (b)(3), b(6 remains were removed and placed in a recovery container and brought back to FOB Warrior.

It was told to me that there was a body on the field adjacent to the road and in close proximity to the path the man in black used. I did not see this person at any time during the event. nothing Follows.

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

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF _____ PAGES
	(b)(3), b(6)	

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____

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MENT OF (b)(3), b(6) TAKEN AT Kirkuk Iraq DATED 2007/10/12

STATEMENT *(Continued)*

AFFIDAVIT

I, (b)(3), b(6), HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 1. I FULLY UNDER EMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY W HOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUEN

(b)(3), b(6)

(Signature of Person Making Statement)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, _____ at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE OF PAGES

STORY BOARD

Who: 3/D/2-22 IN

What: IED

Where: [redacted] of FOB Warrior

When: 120727COCT07

CF Cas 1 US KIA, 4 US WIA

Narrative:

While exiting Gate 5 of FOB WARRIOR KIRKUK 3/D/2-22 IN was struck by an IED. During the incident the HHC commander reported that a LN wearing black clothing had been seen fleeing the immediate area and was engaged with small arms fire. [redacted] Four Soldiers were able to dismount and get clear of the truck however, one casualty was reported trapped in the burning vehicle and was unable to be freed. One WIA was immediately CASEVAC'd to FOB WARRIOR EMEDs. The QRF arrived at [redacted] and CASEVAC'd two casualties to EMEDS. During the immediate follow up the QRF moved to secure the position of the LN seen wearing black; upon arrival they found one LN KIA that did not fit the original description. The LN KIA was a [redacted] year old boy; [redacted] SHADOW then reported following the individual wearing black into a house. At 0957 the IP arrive to help secure and search the area under the command and control of 2/B/2-22 IN. Prior to the cordon going into position, shadow observed an individual in black clothing fleeing the house. 1/B/2-22 IN pursued the individual but did not capture him. By 1005 the cordon was set and the search began; nothing significant was found. The FIDO results were negative in the house. Follow up reporting from the HHC Commander indicates that five minutes prior to the IED detonation a [redacted] was seen in the area the IED detonated.

[redacted]

(b)(2)High

(b)(2)High

(b)(2)High

SECRET//REL TO USA,MCFI//201709XX

08-IH4-T009-00011

CENTCOM 020361

A relative of the Muktar [redacted] (b)(6) informed 1/B/2-22 that a five minutes prior to the IED detonation a [redacted] (2) H was seen in the area that the IED detonated. This is similar to the story that the HHC Commander received when talking to villagers after the detonation. 1/B/2-22 pursued a [redacted] (2) H and caught up [redacted] (2) H near the PJCC believing that [redacted] (2) H might be the one that emplaced the IED. The SWT guided 1/B/2-22 IN onto the vehicle. The vehicle turned out to be a [redacted] (2) H [redacted] (2) H with a family [redacted] (2) H. The family was not connected with the events in any way. After reviewing

(b)(2) High

LOCATION [redacted] (2) H
UNIT: 3/D/2-22 IN, HHC 2-22 IN
TIME: 0727
CASUALTIES: 4 X WIA , 1 X KIA

(b)(2)High

(b)(2)High

(b)(2)High

08-IH4-T009-00012

CENTCOM 020362

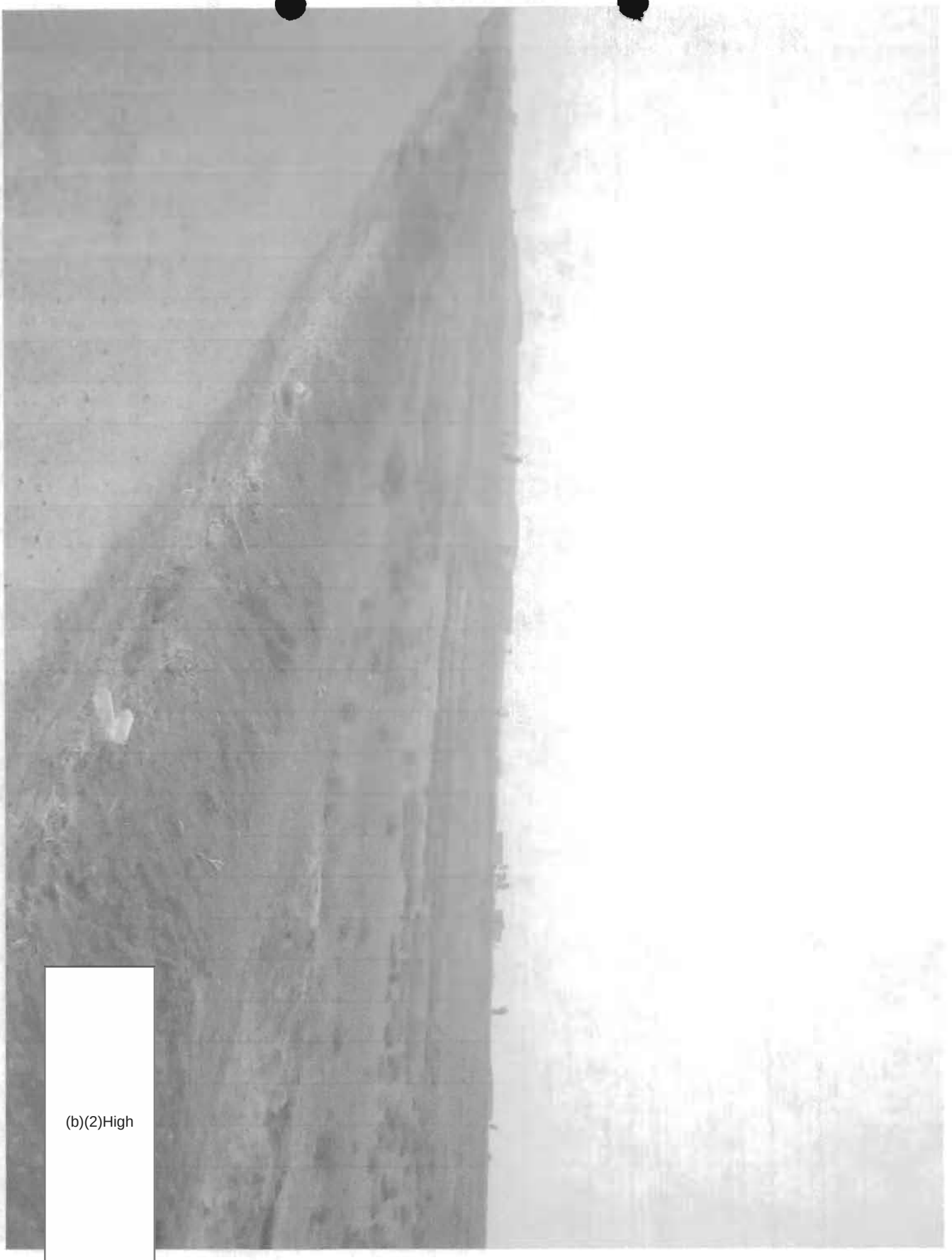
(b)(2)High
Deceased LN male
yrs old found by
(2)Hi
b)(6
UE in black seen running
(b)(2)High

(b)(2)High

(b)(6)

(b)(2)High

(b)(2)High, (b)(6)



(b)(2)High

U.S. GOVERNMENT
PURCHASE ORDER-INVOICE-VOUCHER

DATE OF ORDER 12-Oct-07 | ORDER NO. (b)(2)High

PRINT NAME AND ADDRESS OF SELLER (Number, Street, and State)*

PAYEE
Mr. (b)(6)
Kirkuk, Iraq

Furnish Supplies or Services to (Name and Address)

COMMANDERS CONDOLANCE FUND **1BCT X 7008**

SUPPLIES OR SERVICES	QTY	UNIT PRICE	AMOUNT
Condolance Payment	1 EA.	$2,500.00	$2,500.00

AGENCY NAME AND BILLING ADDRESS*

PAYOR
15th Finance
F Detachment, FOB Warrior
Kirkuk, Iraq
APO AE 09335

TOTAL $2,500.00
DISCOUNT TERMS
.....0.%
Net 30 ..... DAYS
DATE INVOICE RECEIVED 12-Oct-07

ORDERED BY (Signature and Title)
PPO: 1LT (b)(3), b(6)

PURPOSE AND ACCOUNTING DATA
(b)(2) High

To sign below for over-the-counter deliver of items

Received by
Witness (b)(3), b(6)
TITLE:
DATE 12-Oct-07

SELLER - Please read instruction on Copy 2

PAYMENT RECEIVED	PAYMENT REQUESTED
$2,500.00	$2,500.00

NO FURTHER INVOICE NEED BE SUBMITTED

Seller: Mr. (b)(6)
Signature b(6)
Today's date 12-Oct-07

I certify that this account is correct and proper for payment in the amount of
$2,500.00

DIFFERENCES

(b)(3), b(6)
PA: 1LT (b)(3), b(6)
Authorized certifying officer

ACCOUNT VERIFIED CORRECT FOR
BY

PAID BY	CASH	DATE PAID	VOUCHER NO
OR.		12-Oct-07	

* PLEASE INCLUDE ZIP CODE

1 SELLER'S INVOICE
(See instructions on Copy 2)

STANDARD FORM 44A (Rev. 10-83)
PRESCRIBED BY GSA
FAR (48 CFR) 53.213 (c)

DEPARTMENT OF THE ARMY
1st Infantry Brigade Combat Team Command Judge Advocate
1st Infantry Brigade Combat Team
FOB Warrior, Kirkuk, Iraq, APO AE 09338

AFZS-LI-Z

~~13~~ 15 October 2007

MEMORANDUM FOR Commander, 1st Brigade Combat Team, 10th Mountain Division (Light Infantry), FOB Warrior, Iraq, APO AE 09338

SUBJECT: 1st BCT CERP CONDOLENCE FUND

1. The purpose of this memorandum is to request a condolence payment be made to (b)(6) (b)(6) using the 1st BCT, 10th MTN DIV (LI) CERP Condolence Fund for the death of his son, (b)(6) On 120730OCT07, Mr. (b)(6) claims that his son was shot by Coalition Forces while they engaged unknown enemy forces that had detonated an Improvised Explosive Device. (b)(6) was killed during this incident.

2. Description of how these monies will support the 1st BCT, 10th MTN DIV (LI) Commander's intent and spending priorities for CERP funds: This payment will support the strong relationship the 1st BCT has with the local populace by expressing our regret for the death of (b)(6) (b)(6) son.

3. List the specific items or services requested in the table below:

#	Items to be purchased or service rendered	Unit Price	Quantity	Total Price
1	Payment for death	$2,500.00	1	$2,500.00
	Total:			$2,500.00

4. The transaction will be completed at one time with one payment.

5. POC for this action is CPT (b)(3), b(6) VOIP 242-2624. (b)(3), b(6), (b)(2)High

This condolence payment is legally sufficient / ~~insufficient~~.

(b)(3), b(6)
CPT, JA
Foreign Claims Commissioner

I approve / disapprove this condolence payment.

(b)(3), b(6)
COL, IN
Commanding

CERP CONDOLENCE PAYMENT WORKSHEET

TYPE OF OPCA PROJECT: Regional Level Quick Impact Fund

MILITARY UNIT COORDINATING PROJECT: HHC, 1BCT, 10th MTN DIV, Judge Advocate

MILITARY UNIT CONTACT INFO FOR PROJECT

NAME: CPT (b)(3), b(6)
PHONE: VOIP 242-2624
NIPR EMAIL: (b)(3), b(6), (b)(2)High

NAME THE PROJECT: CERP Condolence Fund Payment to Mr. (b)(6) the father of (b)(6) for his son's death.

PROJECT LOCATION: Kirkuk, Iraq

PROJECT DESCRIPTION: Condolence Payment to Mr. (b)(6).

DESCRIBE DIRECT BENEFIT TO IRAQI POPULATION: Condolence payments are designed to promote and maintain friendly relationships with local nationals. A condolence payment is intended to express sympathy for death, injury, or property damage caused by U.S. or Coalition Forces during combat activity. It is not an admission of guilt.

COST (U.S. Dollars) AND JUSTIFICATION: **$2,500.00**. On 120730OCT07, Mr. (b)(6) (b)(6) claims that his son was shot by coalition forces while they engaged unknown enemy forces that had detonated an Improvised Explosive Device. Mr. (b)(6) was killed during this incident.

NAME AND POSITION OF IRAQI WHO WILL ASSUME RESPONSIBILITY FOR THE COMPLETED PROJECT (Responsible Iraqi): Mr. (b)(6)

ESTIMATED NUMBER OF DAYS REQUIRED TO COMPLETE THIS PROJECT: 1