6-IA3-117

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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 were the deceased was dead on arrival. SIGACTS (b)(2)Highconfirmed 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 no compensable because the death was incident to a combat operation.

7. Recommendation: The claim is denied.

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

CPT, JA Claims Judge Advocate



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:		
i Uiner		

- 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 DNVT (b)(2)High.

(b)(6)

CPT. FCC
Foreign Claims Commissioner

Claims Form
To: United States Army Foreign Claims Commission. From: Name:(b)(6) POA/ATT:
☐ Power of Attornev provided and interpreter approved:
→ Decedents:_ (b)(6)
Hometown: Dar Ahmed Iraqi Resident:
My claim arose at: Ben Almed (City) (Country)
My claim arose on: // OCT 65
Month Day Year Proof of Ownership: ☐ Interpreter Approved:
Death Certificates (Name, Cause of Death, Age, and Time of Death Consistent with Claimant allegations): Y - Amorican Death Certificates
□ Interpreter Approved:
Legal Expert Opinion: / Nime /
Witness Statement (Consistent?): ☐ Interpreter Approved:
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Subscribed before me t	his 27 day of <i>N</i>OV	, 200 <u>5</u> .	
		(b)(6), (b)(3)	_
	. Navianije i		_
	(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 Iragi 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, specically 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?

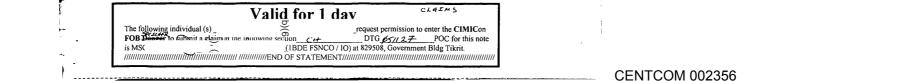
The Claimant appears to be credible, and I would like to give a condolence payment to the deceased's family, but of course, I need to verify the incident and get some more information. Any information you could provide on this incident would be invaluable in my investigation.

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



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