

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
Claim # N10036-1381
25 October 2011

Albert Hayward


Dear Mr. Hayward:


The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1381 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1381.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100


Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1381
Claimant	Albert Hayward
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$180,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 08 September 2011, Albert Hayward (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$180,000.00 for loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

The Claimant worked for Wadleigh Industries (Wadleigh) in Slidell, Louisiana.¹ He worked offshore as a drilling rig mechanic.² On 23 April 2011, as part of a Reduction in Force (RIF), the Claimant was separated from Wadleigh.³ The Claimant stated he worked for Wadleigh for 13 years.⁴ The Claimant also stated that the company anticipated a lack of work after the Deepwater Horizon oil spill and that it was going to be ordered to stop work.⁵ The Claimant stated he lost his job due to the oil spill.⁶ The Claimant applied to the Gulf Coast Restoration & Protection Foundation. His request for assistance was denied.⁷

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon

¹ Separation Notice from Wadleigh Industries, Inc. dated 23 April 2010

² OSLTF Claim Form signed by Claimant 23 August 2011

³ Separation Notice from Wadleigh Industries, Inc. dated 23 April 2010

⁴ Claimant's letter dated 17 October 2011 to NPFC in response to NPFC's request for additional information

⁵ Claimant's letter dated 17 October 2011 to NPFC in response to NPFC's request for additional information

⁶ OSLTF Claim Form signed by Claimant 23 August 2011

⁷ Gulf Coast Restoration & Protection Foundation letter dated 26 October 2010

the navigable waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 23 August 2011
- Gulf Coast Restoration & Protection Foundation letter dated 26 October 2010
- GCCF letter dated 23 October 2010 confirming denial of Emergency Advance Payment
- Separation Notice from Wadleigh Industries, Inc. dated 23 April 2010
- Claimant's letter dated 17 October 2011 to NPFC in response to NPFC's request for additional information
- Form 1040 US Individual Income Tax Returns for 2009 and 2010
- Notice of Bankruptcy File Eastern District of Louisiana
- Letter from Aruther S.Mann III, attorney, concerning Motion and Notice of Hearing
- Notice of Hearing of Motion by Ford Motor Credit Corporation dated 19 August 2010
- Form 2016 Employee Business Expenses and Schedule A Miscellaneous Itemized Deductions for 2008
- Form W-2 Wage and Tax Statement from Wadleigh Industries for 2008
- Form 1099-Misc from Housing Authority of New Orleans for Rents

On 16 September 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 19 October 2011, the Claimant responded to the request.

Before presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 18 September 2010 in the amount of \$50,000.00.⁸ The claim was assigned Claimant ID #3018813 and claim #72426. The EAP claim was denied on 23 October 2010.⁹ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF on 04 November 2011 in the amount of \$50,000.00.¹⁰ The claim was assigned claim #9017674. The FRF claim was denied on 21 April 2011.¹¹ Finally, the Claimant filed an Interim Payment Claim (ICQ32011) on 26 July 2011 in the amount of \$50,000.00.¹² The claim was assigned claim #9424761. The IC Claim was denied 16 August 2011.¹³

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the GCCF claims to be properly presented to the Responsible Party. To the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1381

⁸ Report from the GCCF dated 06 October 2011

⁹ GCCF Denial Letter dated 23 October 2011

¹⁰ Report from the GCCF dated 06 October 2011

¹¹ GCCF Denial Letter dated 21 April 2011

¹² Report from the GCCF dated 06 October 2011

¹³ GCCF Denial Letter dated 16 August 2011

considers and addresses the loss of earnings up to the amount of \$50,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #72426 EAP, #9017674 FRF and #9424761 ICQ32011.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

The Claimant asserted a loss of earnings of \$180,000.00.¹⁴ However, his federal tax returns show wages of \$18,263.00 for 2009 and \$35,254 for 2010.¹⁵ The Claimant's W-2 shows wages of \$46,261.90 for 2008.¹⁶ These documents do not support his alleged loss of earnings in the amount of \$180,000.00. The Claimant indicated that the loss of earnings he claims included the cost of dealing with his bankruptcy.¹⁷

The Claimant worked offshore as a drilling rig mechanic.¹⁸ The Claimant stated he lost his job due to the oil spill.¹⁹ However, the Claimant's loss of earnings is a result of the federal oil drilling moratorium imposed after the oil spill and the higher permitting standards in force after the moratorium and not a direct result of the discharge or substantial threat of discharge of oil.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:  *Claims Adjudication Division*

Date of Supervisor's Review: *25 October 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁴ OSLTF Claim Form signed by Claimant 23 August 2011

¹⁵ Form 1040 US Individual Income Tax Returns for 2009 and 2010

¹⁶ Form W-2 Wage and Tax Statement from Wadleigh Industries for 2008

¹⁷ Claimant's letter dated 17 October 2011 to NPFC in response to NPFC's request for additional information

¹⁸ OSLTF Claim Form signed by Claimant 23 August 2011

¹⁹ OSLTF Claim Form signed by Claimant 23 August 2011