

U.S. Department of
Homeland Security

**United States
Coast Guard**



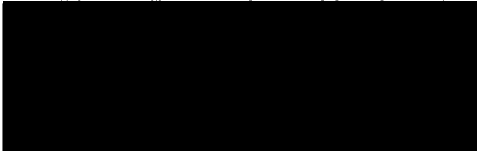
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4319

5890/DWHZ
23 April 2012

Ms. Janet McWilliams



Re: Claim Number: NI0036-1721

Dear Mr. Barksdale:

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 NI0036-1721 involving the Deepwater Horizon oil spill. 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 NI0036-1721.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CC: Ms. Janet McWilliams

3025 Bent Oak Road

Pensacola, FL 32526

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7011 1570 0001 2446 4326

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1721
Claimant	Janet McWilliams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$15,090.18

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 15 March 2012, Arthur S. Barksdale IV, Esq., on behalf of Ms. Janet McWilliams, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$15,090.18 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was employed with Ocean Breeze Cleaning Services, where she had worked since January of 2008.² The Claimant alleged that she lost her job due to tourism decreases in Pensacola, Florida following the oil spill. In a letter describing her losses, the Claimant stated, "I was eventually laid off because tourists stopped coming to the area due to the oil spill . . . It is obvious that as a cleaning company, dependent on tourism, located along the gulf coast, we were severely affected."³

In order to calculate her losses, the Claimant subtracted her 2010 income from the average of her 2008 and 2009 income, thereby calculating an average monthly loss of \$301.80. The Claimant then multiplied her average monthly loss by a "monthly actuarial forecast loss due to industry effect multiplier" of 36, to come to a total sum certain of \$15,090.18.⁴

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 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.

¹ Claim Cover Letter, 7 March 2012.

² GCCF Full Review Final Claim Form, pg. 2.

³ Letter from the Claimant, describing losses, 13 December 2011.

⁴ Lost Earnings/Income Worksheet.

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, the Claimant submitted the following documentation:

- Claim cover letter, 7 March 2012;
- NPFC Authorization Agreement, 8 March 2012;
- Emails from the Claimant's attorney to the NPFC, 15 March 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 9 February 2012;
- GCCF Full Review Final Payment Claim Form;
- Letter from the Claimant regarding inability to reach former employer, 13 December 2011;
- Lost Earnings/Income Worksheet;
- Copy of drivers' licenses, early McWilliams, Janet McWilliams;
- Handwritten letter from the Claimant, describing losses, 21 August 2011;
- 2008 Tax Return Transcript;
- 2008 Form W-2 Wage and Tax Statement;
- 2009 Form W-2 Wage and Tax Statement;
- 2010 Form W-2 Wage and Tax Statement;

- GCCF Client Authorization, 19 August 2011;
- Letter from the Claimant regarding inability to contact former employer, 30 January 2012.

On 28 September 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking \$15,090.18 in loss of profits and impairment of earning capacity damages.⁵ The Claimant was assigned Claimant ID 1632811 and the FRF claim was assigned claim # 9510895.⁶ This claim was initially denied and currently remains under re-review by the RP/GCCF.⁷

On 15 March 2012, the Claimant presented this claim to the NPFC, seeking \$15,090.18 in loss of profits and impairment of earning capacity damages. Because these damages have first been presented in a claim to the RP/GCCF and because no final determination has been issued with 90 days of presentment,⁸ the NPFC may properly adjudicate the entirety of this claim for \$15,090.18 in loss of profits damages.

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, destruction or loss of real or personal property or of 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 this claim.

The Claimant alleged that she was laid off from her position with a cleaning service in Pensacola, Florida, due to lack of business resulting from effects of the Deepwater Horizon oil spill.⁹ The Claimant did not provide financial documentation to support these losses, and also failed to provide any evidence to prove that her employment was terminated as a result of the oil spill. The Claimant asserted that she was unable to contact her former employer to confirm these losses because the Claimant “[could not] get a letter from a company that is no longer in business.”¹⁰

In order to gather further information regarding this claim, the NPFC contacted the Claimant via certified mail¹¹ and via email,¹² requesting certain additional information to substantiate the Claimant’s assertions. The initial letter, dated 19 March 2012, requested that the Claimant respond within 14 days of the date of the request for additional information. As of the date of this determination, the Claimant has failed to respond.

In further attempts to verify this claim, the NPFC contacted the cleaning service where the Claimant was formerly employed. A representative of the cleaning service stated that contrary to the Claimant’s assertions, the company did not close after the oil spill, and is still operating. The representative also stated that the Claimant was not laid off, but left her position voluntarily for reasons unrelated to the Deepwater Horizon oil spill.¹³

⁵ GCCF United States Coast Guard Report, 17 April 2012.

⁶ GCCF United States Coast Guard Report, 17 April 2012.

⁷ GCCF United States Coast Guard Report, 17 April 2012.

⁸ 33 C.F.R. § 136.103(a).

⁹ Letter from the Claimant, describing losses, 13 December 2011.

¹⁰ Letter from the Claimant, describing losses, 30 January 2012.

¹¹ NPFC Request for additional information, dated 19 March 2012.

¹² NPFC Request for additional information sent to the Claimant’s legal representative via email, 17 April 2012.

¹³ PHONECON: NPFC Staff and Representative, Ocean Breeze Cleaning Service, 21 March 2012.

Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

This claim is denied because the Claimant has materially misrepresented substantial elements of this claim in an attempt to falsely obtain funds from the Federal Government.

Claim Supervisor:  *NTPC Claims Adjudication Division*

Date of Supervisor's Review: *4/23/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: