

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 9570

5890/DWHZ
26 April 2012

Leonard McMillian


Re: Claim Number: N10036-1725

Dear Mr. McMillian:

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 your claim number N10036-1725 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1725.

Mail reconsideration requests to:

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

Sincerely,


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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1725
Claimant	Leonard McMillian
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$95,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 22 March 2012, Leonard McMillian, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$95,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed as a deckhand with Candy Fleet.¹ Candy Fleet is a supplier of offshore vessels based in Morgan City, Louisiana.² The Claimant asserted that he was laid-off from Candy Fleet due to the Deepwater Horizon oil spill.³ The Claimant later found work at Coastal Towing from 30 July 2010 until 17 October 2010, but stated that he was let go from this job as well due to the Deepwater Horizon oil spill.⁴

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by

¹ Letter of claim explanation from the Claimant, dated 16 November 2010.

² <http://www.candyfleet.com/company.html>, accessed on 25 April 2012.

³ Letter of claim explanation from the Claimant, dated 16 November 2010.

⁴ Letter of claim explanation from the Claimant, dated 16 November 2010.

payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 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

The Claimant's Submission to the OSLTF

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Fax from the Claimant to the NPSC [sic] clarifying his sum certain, received on 22 March 2012;
- Optional OSLTF Claim Form, dated 22 March 2012;
- Copy of Alabama drivers license and Social Security card;
- Contact information for Coastal Towing;
- Denial Letter on Interim Payment/Final Payment Claim, dated 22 April 2011;
- Denial Letter on Interim Payment/Final Payment Claim, dated 08 September 2011;
- Denial Letter on Interim Payment/Final Payment Claim, dated 19 October 2011;
- Letter of claim explanation from the Claimant, undated;

- Letter of claim explanation from the Claimant, dated 16 November 2010;
- Copies of Unemployment Benefits from October 2010 through August 2011;
- Pay stub from Rigdon Marine Corp for the period ending 13 April 2007;
- GCCF Interim Payment Claim Form, undated;
- 2007 Form 1040A U.S. Individual Tax Return;
- 2008 Form 1040A U.S. Individual Income Tax Return;
- 2009 Form 1040 U.S. Individual Income Tax Return;
- 2010 Form 1040A U.S. Individual Income Tax Return;
- 2010 Form 1040X Amended U.S. Individual Income Tax Return;
- 2010 Form W-2 from Candy Fleet, L.L.C.;
- 2010 Form W-2 from Coastal Towing LLC;
- 2008 Form W-2 from Abdon Callais Offshore LLC;
- Pay stubs from Candy Fleet Marine for the period 30 May 2010 through 24 July 2010;
- Pay stubs from Coastal Towing for the period 21 July 2010 through 12 October 2010;
- Payroll records from Seaport Marine, Inc for the period 22 June 2010 through 14 October 2010;
- Cancelled checks from Seaport Marine from June 2010 through October 2010;
- Seaport Marine Deposit Statements from June 2010 through October 2010;
- Schedule of Payments with handwritten title of "Light Bill" from February 2010 through March 2011;
- Payroll Records from Candy Fleet, L.L.C from June and July of 2010; and
- 2010 Form 1099-F from Louisiana Workforce Commission.

Prior to presenting this claim to the NPFC, the Claimant filed four claims with the GCCF for loss of earnings, all under Claimant ID # 3509233. The table below provides relevant information for the Claimant's GCCF claims.⁵

<u>Date Presented to GCCF</u>	<u>Claim No.</u>	<u>Claim Type</u>	<u>Amount Claimed</u>	<u>GCCF Status</u>
10/26/2010	347659	Emergency Advance (EAP)	\$12,000.00	Denied
11/23/2010	9052833	Full Review Final (FRF1)	\$100,000.00	Denied
10/03/2011	9512558	Full Review Final (FRF2)	\$65,000.00	Denied
02/08/2012	9564576	Interim 5 (ICQ52012)	\$95,000.00	Denied

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant lost earnings as a deckhand. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1675 considers and addresses the earnings claimed in the claims presented to the responsible party up to \$95,000.00, specifically; GCCF Claim #'s 347659 (EAP), 9052833 (FRF1), 9512558 (FRF2), and 9564576 (ICQ52012).

NPFC Determination

The claim is denied. 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 NPFC considered all documentation presented by the Claimant.

⁵ Report from the GCCF, dated 17 April 2012.

This claim is denied because the Claimant failed to prove that his alleged financial loss was a result of the Deepwater Horizon oil spill. The Claimant stated in his submission to the NPFC that he has been out of work due to the imposition of the “shipping [sic] moratorium.”⁶ On 27 March 2012, the NPFC contacted the Claimant to confirm the cause of his loss. The Claimant verified that his economic loss was due to the moratorium on oil drilling in the Gulf of Mexico.⁷ Consequently, the Claimant failed to prove his alleged loss was a result of the Deepwater Horizon oil spill as opposed to other factors such as permitting delays and the drilling moratorium, which are considered intervening causes and thus not a consequence of the oil spill.

Accordingly, this claim is denied because the Claimant failed to meet his burden to: (1) demonstrate a loss in the amount alleged, and (2) demonstrate that his 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/26/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Fax from the Claimant to the NPSC [sic] clarifying his sum certain, received on 22 March 2012.

⁷ PHONECON between the NPFC and the Claimant on 27 March 2012.