

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
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail:
Donna.M.Hellberg@uscg.mil
Fax: 703-872-6113

5890
8/28/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2445 1685

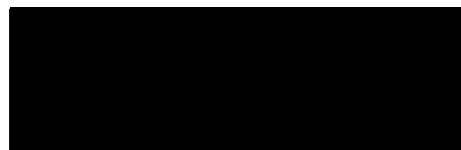
Robert Weber


RE: Claim Number: N10036-1827

Dear Mr. Weber:

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 claim number N10036-1827 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.



Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1827
Claimant	: Robert Weber
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$44,352.00

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.

On 8 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT:

On 24 May 2012, Robert Lee Weber, Jr. (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$44,352.00 in loss of profits and impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹ The Claimant is a general laborer who had been unemployed before the oil spill, but asserts that he caught and sold fish before the oil spill. He was then hired to clean the beach at Fort Morgan, Alabama.² The Claimant asserts that he lost income in 2010 when the oil spill clean-up work ended and is still unemployed.³

Prior to presenting this claim to the NPFC, the Claimant indicates that he submitted a claim to the responsible party on 24 May 2012.⁴ The Claimant also indicates that he was just submitting his claim to the responsible party.⁵

The NPFC conducted an independent investigation of claim presentation and payments. Contrary to the Claimant's assertion that he was just submitting his claim to the responsible party, the NPFC confirmed presentment to the GCCF of a Final Claim prior to 23 September 2010 and that the GCCF assigned him Claimant Identification No. 1164636.⁶

¹ Optional OSLTF Claim Form received 24 May 2012.

² Claimant's handwritten letter To Whom It May Concern dated 24 May 2012 and phone conversation between Claimant and NPFC Staff on 18 June 2012.

³ Claimant's handwritten letter To Whom It May Concern dated 24 May 2012.

⁴ Optional OSLTF Claim Form received 24 May 2012.

⁵ Optional OSLTF Claim Form received 24 May 2012.

⁶ GCCF letter to the Claimant dated 23 September 2010.

Further, the NPFC confirmed that two claims were later presented to the GCCF, one for lost earnings & profits and another for loss of subsistence, assigned GCCF Claim Numbers 9596041 and 9596662, respectively.⁷ The NPFC confirmed that Claim No. 9596041 for Lost Earnings & Profits had been denied.⁸ The NPFC also confirmed presentment of a Full Review Final Claim to the GCCF under Claim No. 9022143; however, the NPFC has no information on the type of damages that were claimed in that presentation.⁹

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

The NPFC denied the claim originally on July 26, 2012 because as an initial matter, it appeared that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF.

According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, then he should submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

Furthermore, this claim was also denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill. The Claimant has not shown by documentation that he had a job before the oil spill which he lost as a result of the oil spill.¹⁰ The Claimant did show income resulting from the oil spill that provided him with a net benefit, as opposed to a loss. Accordingly, the loss of earnings has not been proven and was denied

As such, this claim was denied for the following reasons: (1) the Claimant is considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP; (2) the Claimant has failed to demonstrate his alleged loss through financial documentation; and (3) the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill).

⁷ GCCF Deficiency Letters, both dated 11 May 2012.

⁸ GCCF Denial Letter on Interim Payment/Final Payment Claim dated 20 May 2012.

⁹ GCCF Claimant Status report accessed on 24 May 2012.

¹⁰ Letter from FERS Restoration Services, LLC, dated 27 August 2010; FERS Restoration Services, LLC, Employee Pay History for Claimant; and Summary of Phone call between Claimant and NPFC Staff on 18 June 2012.

REQUEST FOR RECONSIDERATION:

On August 13, 2012, the Claimant sent a request for reconsideration to the NPFC via facsimile stating he would like the NPFC to reconsider his claim. The Claimant provided no arguments or discussion to support a request for reconsideration. The Claimant's request merely states "Sorry im late for sending these documents. I wanna ask for reconsideration". The Claimant also sent a copy of his Mississippi driver license, a copy of his social security card, a copy of a PEC General Purpose identification card, a copy of the Claimant's 2010 & 2011 IRS Tax Return Transcripts.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of all of the Claimant's information, the Claimant has failed to address the reasons outlined in the NPFC's initial denial as outlined previously. Additionally, it is important to note that the total income reported in 2010 per the IRS Tax Transcript was \$7,926.00 and the total income reported in 2011 per the IRS Tax Transcript was \$9,663.00.

Based on the foregoing, this claim is again denied because (1) the Claimant is considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP; (2) the Claimant has failed to demonstrate his alleged loss through financial documentation; and (3) the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill).

This claim is denied upon reconsideration.

Claim Supervisor 

Date of Supervisor's review: 8/28/12

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments: