

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
July 17, 2013

CERTIFIED MAIL: RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2445 1784

Curtis Foster


RE: N10036-1942

Dear Mr. or Ms. Foster:

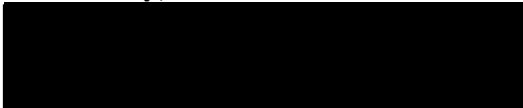
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number involving DEEPWATER HORIZON - N10036 spill.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

Disposition of this reconsideration constitute final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,


Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Enclosure: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1942
Claimant	: Curtis Earl Foster
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$20,000.00

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.

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 23 May 2013, Mr. Curtis Foster, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$20,000.00 to \$30,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant alleged that he was employed as a welder at Gulf Ship, LLC in Gulfport, Mississippi.² From 20 April 2010 until the time of this claim presentment, the Claimant alleged to have lost between \$20,000.00 and \$30,000.00 due to a lack of work resulting from the effects of the Deepwater Horizon oil spill.³

The claim was denied on 18 June 2013 on the grounds that Claimant failed to establish that (1) he was either not a member of the settlement class or he had opted out of the class and (2) he suffered a loss of profits due to the incident.

REQUEST FOR RECONSIDERATION:

On July 10, 2013, the Claimant sent a request for reconsideration to the NPFC 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 "I am writing to request for reconsideration of this claim. For loss of income from my job Gulfship. I am sending my W2 and check stubs with this letter".

¹ Optional OSLTF Claim Form, received on 23 May 2013.

² Claim Description, undated.

³ Optional OSLTF Claim Form, received on 23 May 2013.

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).

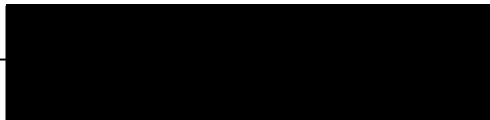
The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of all of the Claimant's information, the Claimant has failed to address the reasons for denial in the NPFC's initial denial as outlined previously. The Claimant did produce W2s and check stubs which the W2s demonstrate the following annual earnings: 2008 - \$23,870.00, 2009 - \$46,844.56, 2010 - \$47,435.25, and 2011 - \$56,070.49. The W2s reflect that Claimant made more money each year from 2008 through 2011 and while he made less in 2010 than he did in 2011 he failed to provide evidence that demonstrates that the reduced income in 2010 compared to 2011 earnings was the direct result of the Deepwater Horizon oil spill.

Additionally, the Claimant has not addressed the fact that he may be a member of the E&PD Settlement and not provided evidence that he is not a member of, or opted out of, that class. Therefore, his claim is considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. 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. 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 has no rights to subrogate to the Fund. .

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 and (2) 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: 7/17/13

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: