

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# N10036-1203
18 August 2011

John Robert Jackson


RE: Claim Number: N10036-1203

Dear Mr. Jackson:

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 N10036-1203 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. 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 N10036-1203.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1203
Claimant	John Robert Jackson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$4,320.00

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 15 June 2011, John Robert Jackson (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$4,320.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant worked for the United States Census collection from 16 March 2010 until 25 April 2011 when he was terminated.¹ The Claimant stated that he cannot locate a job since being terminated due to the Deepwater Horizon oil spill.²

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.

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

¹ See two Notification of Personnel Action Standard Forms 50

² See OSLTF claim form dated 02 June 2011

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 his claim, Claimant submitted

- 1) OSLTF claim form dated 02 June 2011
- 2) Two Notification of Personnel Action forms from U.S. Office of Personnel Management
- 3) 2009 W-2 from Winn-Dixie Stores, Inc.
- 4) 2009 W-2 from Wal-Mart Associates, Inc.
- 5) 2009 W-2 from Family Dollar Stores of Alabama, Inc
- 6) 2010 W-2 from U.S. Department of Commerce U.S. Census Bureau
- 7) 2010 W-2 from Wal-Mart Associates, Inc.
- 8) 2010 1099-G from the State of Florida Agency for Workforce Innovation

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$4,320.00.

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF; he was assigned Claimant #3005599 and Claim ID #45668. GCCF denied the claim on 07 December 2010.³ Additionally, Claimant filed two Full Review Final claims with the GCCF, Full Review Final (FRF1) Claim 1 with GCCF #9025078 and Full Review Final Claim 2 (FRF2) with Claim #9133363. These claims were denied on 05 May 2011.⁴ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that Claimant lost wages and earnings as a result of the Deepwater Horizon oil spill. The NPFC

³ GCCF Denial Letter dated 07 December 2010

⁴ GCCF Denial Letter dated 05 May 2011

deems each of Claimant's three denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1203 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 45668 (EAP), 9025078 (FRF1), and 9133363 (FRF2).

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that the alleged loss of income was due to the 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 NPFC considered all the documentation submitted by the Claimant.

Claimant has failed to provide any documentation to substantiate his alleged loss due to the Deepwater Horizon oil spill. The Claimant worked for the Census Bureau until 25 April 2010, when he was terminated for reasons unrelated to the oil spill.⁵ Claimant stated that he was unable to obtain new employment due to the Deepwater Horizon oil spill.⁶ Because the Claimant was not terminated from his job as a census worker due to the oil spill, and because the Claimant has failed to show that his inability to obtain new work was the result of the oil spill. As such, the Claimant has not demonstrated that he has lost profits or suffered an impairment of earnings capacity.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) 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: *8/18/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ See Notification of Personnel Action regarding termination effective 25 April 2010

⁶ See OSLTF claim form dated 02 June 2011