

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
Claim # N10036-1303
18 August 2011

Stephen J. Williams


Re: Claim Number: N10036-1303

Dear Mr. Williams:

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 N10036-1303 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 N10036-1303.

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	N10036-1303
Claimant	Mr. Stephen Williams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$6,700.00

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 2 August 2011, Mr. Stephen Williams (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$6,700.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, who lives in Mobile, AL, was unemployed at the time of the oil spill and has been unable to find work.² The Claimant alleged that the oil spill resulted in his inability to find employment in Mobile, in spite of his efforts to contact former employers and paying a staffing service to assist in his job search.³

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 established by income tax returns, financial statements, and similar documents. In addition, comparative figures for

¹ Optional OSLTF Claim Form dated 2 August 2011.

² PHONECON: NPFC Staff and Claimant, 17 August 2011.

³ Optional OSLTF Claim Form dated 2 August 2011.

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, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, 2 August 2011;
- 2010 W-2 Wage and Tax Forms, showing payment of \$292.04 from Adecco USA, Inc.;
- 2010 Wage and Income Transcript, showing wages of \$4,464.00;
- 2009 Wage and Income Transcript, showing wages of \$975.00;
- Letter from Claimant, describing losses, 21 December 2010;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, Claimant ID 3380043, 1 April 2011;
- Note from Pro Resources, confirming Claimant's attempt to find employment, undated;
- Records of payment made for car washes, 30 April 2010, 1 May 2010.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) claim, and a Full Review Final (FRF) claim to the RP/GCCF. Claimant was assigned ID 33080043, and EAP and FRF were assigned claim #'s 447070 and 9136610. Claimant's EAP was denied on 6 December 2010, and FRF was denied on 1 April 2011.⁴

On 11 August 2011, Claimant presented this claim for \$6,700.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because Claimant has previously presented claims for lost profits and earnings to the RP/GCCF, this NPFC determination shall address Claimant's EAP and FRF in the amount of \$6,700.00 as now presented to the NPFC.

⁴ GCCF Denial Letter on Interim Payment/Final Payment Claim, provided by Claimant.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his 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 his claim.

In order to prove a claim for loss of profits and earnings, the Claimant must demonstrate (1) that the Claimant sustained a financial loss, and (2) that the loss was caused by the Deepwater Horizon oil spill.

The Claimant's alleged \$6,700.00 loss is based on his inability to find work in Mobile, AL for several months following the oil spill. However, the Claimant was unemployed at the time of the oil spill,⁵ and did not lose a job, or lose earnings as a result of the oil spill. Claimant stated that at the time of the oil spill, he was "washing cars at his [residence]" in order to support his family.⁶ The Claimant has not claimed that his car washing business was affected by the oil spill, but rather, that Claimant continued to be unable to secure permanent employment. Therefore, the Claimant has not demonstrated that he suffered any actual financial loss. Furthermore, the Claimant provided no evidence or documentation to show that he was somehow affected by the oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he had a loss of \$6,700.00, and (2) that the 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 Action: *Denial approved*

Supervisor's Comments:

⁵ PHONECON: Claimant and NPFC Staff, 17 August 2011.

⁶ Letter from Claimant, 21 December 2010; PHONECON: Claimant and NPFC Staff, 17 August 2011.