

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
10/19/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6111

Elbert Hargrove

RE: Claim Number: N10036-1389

Dear Mr. Hargrove:

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 N10036-1389 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.

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

Sincerely,

Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1389
Claimant	: Elbert Hargrove
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$90,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 09 September 2011, Elbert Hargrove (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$90,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant painted, cut grass, and performed handy-man work in Biloxi, Mississippi, as an independent contractor. The Claimant stated that he lost earnings because after the oil spill as "nothing was going on"¹ and that after the oil spill his customers were out of work.² The Claimant stated that he has contacted GCCF on a daily basis for five months and that the GCCF has made no determination on his claim.³

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP). The claim was assigned Claimant ID #3172331 and claim #227499. The EAP claim was denied on 07 December 2010.⁴ The Claimant filed a Full Review Final Payment (FRF) claim with the GCCF. The claim was assigned claim #9347689. The GCCF issued a Deficiency Letter on the FRF claim, which was ultimately denied on 05 May 2011.⁵ As of the date of this determination, the NPFC has been unable to confirm the amount of the EAP and FRF claims presented to the GCCF.

REQUEST FOR RECONSIDERATION:

On October 10, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

¹ PHONECON between the Claimant and the NPFC Staff on 12 and 13 September 2011

² OSLTF Claim Form signed by the Claimant 08 September 2010 Item 10

³ PHONECON between the Claimant and the NPFC Staff on 12 and 13 September 2011 and the OSLFC Claim Form signed by the Claimant 08 September 2010

⁴ GCCF Denial Letter dated 07 December 2010

⁵ GCCF Deficiency Letter dated 05 May 2011

The NPFC denied the claim originally on September 21, 2011 because to the extent that the Claimant may have failed to first present any portion of the \$90,000.00 in lost earnings claimed here to the GCCF, any portion not properly presented is denied pursuant to 33 CFR 136.103(a).

Upon review of all documentation provided, the Claimant has not provided sufficient documentation to support his alleged loss of earnings of \$90,000.00. The Claimant stated that he arrived at the amount of \$90,000.00 when he worked with the GCCF staff on his claim.⁶ The Claimant based the alleged loss on his average earnings for the last three years.⁷ However, his earnings as stated in his Tax Returns do not support a loss of earnings in the amount of \$90,000.00. His Tax Returns indicated gross receipts of \$12,200.00 for 2008 and \$12,900.00 for 2009.⁸ As such, the Claimant has failed to establish the amount of his alleged damages as required by OPA.

The Claimant stated that his customers lost work due to the oil spill and that his former customers had extra time to perform their handy-work themselves.⁹ The Claimant provided the NPFC with the names of three realtors that he had worked for.¹⁰ The NPFC attempted to contact the realtors to corroborate his claim.¹¹ The Property Manager at one of the realty offices stated that the Claimant had not worked for the firm for two and one-half years and further stated that the oil spill did not cause a decline in the demand for the Claimant's type of services in the area.¹²

The Claimant's Tax Return for 2010 for his painting services indicated no gross receipts and \$28,548.00 in Expenses.¹³ The Claimant stated that he showed no gross receipts because he let others do the work and then signed the payment checks over to the various individuals. The Claimant stated that he did this because "they needed the work."¹⁴ Accordingly, the Claimant has failed to establish that any loss suffered was the result of the oil spill.

This claim was denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on October 10, 2011. The Claimant provided a one paragraph typed letter along with a copy of a letter Dated October 7, 2010 from Knowledge Learning Corporation which terminated the Claimant's lawn care and

⁶ PHONECON between the Claimant and the NPFC Staff on 12 and 13 September 2011

⁷ PHONECON between the Claimant and the NPFC Staff on 12 and 13 September 2011

⁸ Schedule C Profit or Loss from Business for 2008 and 2009

⁹ OSLTF Claim Form signed by the Claimant 08 September 2011

¹⁰ List provided by the Claimant of three realty firms the Claimant worked for in Biloxi, Mississippi: Realty Professionals, Bay South Realty and Harry J. Joachim, Inc.

¹¹ NPFC Staff attempted to contact Realty Professionals, Bay South Realty and Harry J. Joachim, Inc. on 13 September 2011

¹² List provided by the Claimant of three realty firms the Claimant worked for in Biloxi, Mississippi: Realty Professionals, Bay South Realty and Harry J. Joachim, Inc.

¹³ Schedule C Profit or Loss from Business for 2010

¹⁴ PHONECON between the Claimant and the NPFC Staff on 12 and 13 September 2011

landscaping services with the company for locations in Mississippi, a copy of the Claimant's Schedule C for 2010 associated with the Claimant's painting business, a copy of Schedule C for 2010 associated with the Claimant's lawn care business, and a copy of Schedule C for 2009 for the Claimant's painting and lawn care businesses (combined on one form), and a handwritten list of three real estate offices which indicate the name of the real estate, the contact person's name and the phone number for each office which is a duplicate of the information originally provided.

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.

The NPFC performed a complete review of the documentation presented by the Claimant.

The Claimant requested reconsideration and stated he is changing his sum certain from \$90,000.00 to \$25,000.00 or less. The only new information provided on reconsideration by the Claimant was an October 7, 2010 letter terminating the Claimant's lawn care and landscaping services from Knowledge Learning Corporation based out of Portland, Oregon. The NPFC contacted the author of the letter, Mr. Wayne Pipes, Vice President of Facilities and Development for the company¹⁵. Mr. Pipes had his Executive Assistant, Ms. Heather James, return the NPFC's call. Ms. James confirmed on October 18, 2011 via a voice message that the Claimant's contract was terminated in 2010 because the company decided to contract with two separate vendors for services and that the company decision to terminate the Claimant's contract had absolutely nothing to do with the Deepwater Horizon oil spill.

Based on the all other information being duplicative of information originally provided, the NPFC has determined that the Claimant has again failed to demonstrate (1) that he suffered a loss in the amount claimed, and (2) that his alleged loss was 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.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: 10/19/11

Supervisor Action: *Denial on reconsideration approved*

¹⁵ The NPFC left a message for Mr. Pipes at 503-872-1300 on October 12, 2011.