

U.S. Department of
Homeland Security

**United States
Coast Guard**

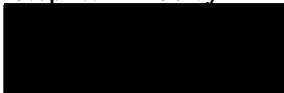


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4357

5890/DWHZ
27 April 2012

Stephen I Mosley


Re: Claim Number: N10036-1747

Dear Mr. Mosley:

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 N10036-1747 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 N10036-1747.

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 | N10036-1747 |
| Claimant | Stephen Mosley |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earning Capacity |
| Amount Requested | \$36,007.20 |

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.

CLAIM AND CLAIMANT

On 10 April 2012, Mr. Stephen I Mosley (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$36,007.20 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon oil spill, the Claimant was employed as an estimator with a metal building company in Daphne, Alabama.² The Claimant alleged that he was laid off on August 1, 2011 due to a lack of business caused by the effects of the spill. A letter from the Claimant's employer, included in this claim submission, specifically states,

[p]art of our business is generated in the southern part of the county or beach area, and as a result of the oil spill, business steadily declined.³

The Claimant alleged that he has been unemployed since his lay-off in August of 2011, noting that he is "still looking for work as of 3/14/12."⁴

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

¹ Optional OSLTF Claim Form, signed on 12 January 2012.

² Letter from the Claimant to the NPFC describing losses, 14 March 2012.

³ Letter from the Claimant's employer, describing losses, 18 August 2011.

⁴ Letter from the Claimant to the NPFC describing losses, 14 March 2012.

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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 5 April 2012;
- Table of contents;
- Letter from the Claimant to the NPFC, 5 April 2012;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 31 August 2011;
- GCCF Form 1012;
- GCCF Interim Payment Claim Form; \$10,660.28 in lost earnings and profits damages;
- Loss of income worksheet, 7/1/11 to 9/30/11;
- Unemployment compensation record, 9/17/11 to 8/13/11;
- GCCF Interim Payment Claim Form; \$13,549.88 in lost earnings or profits damages;
- Loss of income worksheet, 10/1/11 to 12/31/11;
- Unemployment compensation record, 12/3/11 to 12/31/11;
- GCCF Interim Payment Claim Form; \$23,945.15 in lost earnings or profits damages;
- Loss of income worksheet, 7/1/11 to 9/30/11;
- Unemployment compensation record, 2/4/12 to 3/3/12;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 February 2012;
- Letter from the Claimant to the GCCF re: Important Deadline to Elect Quick Payment Option: May 7, 2012, 12 March 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 16 March 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 4 April 2012;
- GCCF Claimant Status Page, 4 April 2012;
- Letter from the Claimant to the GCCF, 14 March 2012;
- GCCF Interim Payment Claim Form; \$11,387.00;
- Loss of income worksheet, 1/1/12 to 3/31/12;
- Unemployment compensation record, 2/18/12 to 3/17/12;
- Letter from the Claimant's employer regarding termination of employment, 18 August 2011;
- Copy of the Claimant's driver's license;
- Letter from the Claimant to the GCCF, 14 March 2012;

- Pay Stub, week ending 7/31/2011;
- Loss calculations;
- Determination of Monetary Entitlement to Emergency Unemployment Compensation, 3/28/12;
- 2009 Form 1040;
- 2009 Form AL30;
- 2008 Form 1040;
- 2008 Forms W-2 & W-2G Summary;
- 2007 Form 1040.

On 22 November 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of wages and earnings damages of \$5,440.00.⁵ The Claimant was assigned Claimant ID 3442360 and the EAP claim was assigned claim # 526253. The RP/GCCF denied payment on this claim.⁶

On 22 August 2011, the Claimant presented a Third Quarter Interim Payment (ICQ32011) claim to the RP/GCCF, seeking loss of wages and earnings damages of \$7,210.00.⁷ The ICQ32011 was assigned claim # 9442496 and was paid in the amount of \$6,871.86.⁸

On 3 October 2011, the Claimant presented a Fourth Quarter Interim Payment (ICQ42011) claim to the RP/GCCF, seeking loss of wages and earnings damages of \$10,660.28. The RP/GCCF denied payment on this claim.

On 4 January 2012, 19 March 2012, and 2 April 2012, the Claimant submitted two Fifth Quarter Interim and one Sixth Quarter Interim claims to the RP/GCCF. (ICQ52012a, ICQ52012b, ICQ62012). The claims were respectively assigned the following claim numbers and sought the corresponding the amount of lost profits and wages damages: (9553448; \$13,549.88), (9581237; \$23,945.16), and (9585496; \$11,387.00).⁹ Each claim was denied payment by the RP/GCCF.¹⁰

On 10 April 2012, the Claimant presented this claim to the NPFC, seeking \$36,007.20 in loss of profits and impairment of earning capacity damages.¹¹ Claims previously presented by the Claimant to the RP/GCCF are concerning the same damages and allege at least the same damage amount as now presented to the NPFC. Therefore, the NPFC may properly adjudicate¹² the entirety of this claim for loss of profits damages in the amount of \$36,007.20.

NPFC Determination

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

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant alleged that in August of 2011, he was laid off from his position as an estimator for a metal construction company in Daphne, Alabama as a result of the general economic effects of the oil spill on

⁵ GCCF United States Coast Guard Report, 17 April 2012.

⁶ GCCF United States Coast Guard Report, 17 April 2012.

⁷ GCCF United States Coast Guard Report, 17 April 2012.

⁸ GCCF United States Coast Guard Report, 17 April 2012.

⁹ GCCF United States Coast Guard Report, 17 April 2012.

¹⁰ GCCF United States Coast Guard Report, 17 April 2012.

¹¹ Optional OSLTF Claim Form, signed on 5 April 2012.

¹² 33 C.F.R. § 136.103(a).

the local construction business.¹³ Specifically, the Claimant noted that the losses incurred by his employer, were caused by decisions of potential and existing customers to delay or forgo construction projects due to concerns regarding the economic impacts of the oil spill.¹⁴ The Claimant has not alleged that beach or other coastal projects were cancelled due to actual oil pollution, but rather that such projects were cancelled due to concerns over economic hardships allegedly resulting from the effects of the oil spill.

However, in his submission to the NPFC, the Claimant has failed to provide evidence to indicate that his employer actually lost business as a result of the discharge of oil caused by the Deepwater Horizon oil spill, or to prove that business losses were sustained by his employer to a degree that would have necessitated his lay-off. The NPFC contacted the Claimant's former employer who confirmed that the company has lost business in the previous two years, but stated that most business losses were due to a general decline in the construction industry and not due to the oil spill itself.¹⁵

Should the Claimant choose to pursue this claim on reconsideration, the Claimant should provide evidence to show that certain construction projects were cancelled as a result of the oil spill, and to show the extent of the business losses sustained by his employer. The Claimant should also provide pay stubs or other financial documentation to indicate how and to what extent his income may have fluctuated in the 17 months of his employment following the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$36,007.20, 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* *RJR*

Date of Supervisor's Review: *4/27/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹³ Letter from the Claimant to the NPFC describing losses, 14 March 2012.

¹⁴ Letter from the Claimant to the NPFC describing losses, 14 March 2012.

¹⁵ PHONECON: NPFC Staff and Kemko, Inc. Representative, 25 April 2012.