

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
27 November 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2445 2767

Ms. Selita Marie Harris


RE: Claim Number: N10036-1846

Dear Ms. Harris:

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 N10036-1846 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.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1846
Claimant	: Ms. Selita Marie Harris
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits or Impairment of Earning Capacity
Amount Requested	: \$10,000.00

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 08 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT:

On 21 June 2012, Ms. Selita Marie Harris (the Claimant) submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,000 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.¹ At the time of the Deepwater Horizon incident, the Claimant stated that she worked as a cook at the Uptown Discount Store in New Orleans.² She alleged that a drop in seafood sales, precipitated by the Deepwater Horizon incident, resulted in her alleged financial losses.³

Prior to presenting this claim to the NPFC, the Claimant presented an Emergency Advance Payment claim and a Full Review Final claim to the RP/GCCF, seeking \$2,500 for each claim.

The NPFC originally denied the claim on several grounds on 20 September 2012.⁴

In the NPFC's initial determination, \$5,000.00 of the claim was denied for failure to properly present the claim to the RP/GCCF. The NPFC may only adjudicate a claim to the extent that it was first presented to the RP/GCCF.⁵ Because the Claimant had only sought \$5,000.00 from the RP/GCCF, the NPFC could only adjudicate the claim in that amount. The NPFC therefore denied \$5,000.00 for improper presentment.

¹ Optional OSLTF Claim Form, signed 24 May 2012.

² Reconsideration Hardship Letter, dated 15 October 2012; Employer Letter, undated.

³ Optional OSLTF Claim Form, signed 24 May 2012; Reconsideration Hardship Letter, dated 15 October 2012.

⁴ NPFC Claim Summary & Determination, dated 20 September 2012.

⁵ 33 C.F.R. § 136.103(a).

The NPFC also noted that the Claimant's submissions indicated that she was a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement). As such, this claim is considered settled, and the Claimant would therefore not have legal rights that the NPFC must obtain, by subrogation, in order to pay a claim.

Turning to the merits of the claim, the NPFC noted that the Claimant had failed to provide any documentation establishing a financial loss and had not provided evidence that her alleged financial loss resulted from the Deepwater Horizon incident. Because the Claimant had not provided this necessary documentation, the NPFC was unable to calculate any financial loss and draw the required causal link between that loss and the Deepwater Horizon incident. Accordingly, the NPFC denied payment.

REQUEST FOR RECONSIDERATION:

On 19 October 2012, the NPFC received the Claimant's request for reconsideration. With her request for reconsideration, the Claimant provided full tax documentation for 2008 and 2009, partial tax documentation for 2011, two pay stubs from 2011, and a letter appearing to be from her supervisor at the time of the Deepwater Horizon incident.

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.

This review sought to determine whether or not the Claimant provided evidence on reconsideration sufficient to prove (1) that the Claimant sustained a financial loss in the amount alleged, and (2) that the Claimant's loss was due to the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill. In terms of proving causation, it is not sufficient to merely prove that *any* effect of the oil spill and associated events somehow contributed to the claimant's loss. Rather, a Claimant must specifically prove that their financial loss was "due to the injury to, destruction of, or loss of real or personal property or natural resources," resulting from the discharge of oil.⁶

1. Improper Presentment

The NPFC confirmed that the Claimant filed two claims with the RP/GCCF for \$2,500.00 each. The Claimant has not provided any new evidence suggesting that she did in fact seek more than \$5,000.00 from the RP/GCCF. Accordingly, the \$5,000.00 of this claim not first presented to the RP/GCCF is again denied upon reconsideration.

⁶ 33 C.F.R. § 136.231(a).

2. Economic and Property Damages Class Action Settlement

The initial determination noted that if the Claimant had opted out of the E&PD Settlement or believed she was excluded from the settlement, she should provide evidence to that effect in her request for reconsideration. The Claimant has not provided any such evidence.

Accordingly, this claim is considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. OPA requires that the NPFC obtain, by subrogation, the rights to recover all costs and damages from the responsible party when paying any claim. Because this claim has been settled by virtue of the Claimant's status as an E&PD Settlement class member, the Claimant no longer has rights to the claim. She therefore cannot subrogate those rights to the NPFC. Accordingly, because the Claimant has not provided evidence that she is excluded from or has opted out of the E&PD Settlement, the OSLTF is still not available to pay her claim.

3. Failure to prove a financial loss in the amount alleged.

This claim is also again denied on its merits, as the Claimant has failed to provide documentation establishing a financial loss in the first instance. Just as with the initial determination, the Claimant has not provided any financial documentation from 2010 to calculate the amount of any financial loss.

The Claimant's incomplete 2011 tax documentation shows a decrease in her adjusted gross income (AGI),⁷ but does not include any information as to what wages she reported, as the Claimant failed to provide the portion of her tax return where her AGI is calculated. The NPFC is therefore unable to calculate the extent of any financial loss that she may have suffered or determine its root cause. As such, the Claimant has failed to demonstrate a financial loss in the amount alleged.

4. Failure to prove a loss due to the injury, destruction, or loss of property or natural resources as a result of the discharge of oil.

The Claimant has also failed to establish that the Deepwater Horizon incident resulted in the alleged financial loss. Aside from a simple allegation that the financial loss was coincident with the oil spill, the Claimant's only evidence ostensibly establishing the required causal link is a letter from her former supervisor.⁸

This letter confirms that the Claimant was employed as a cook at Uptown Food Store, and alleges that the Deepwater Horizon incident caused a decline in business. The letter states that the drop in business required him to cut the Claimant's hours to 20 - 25 hours per week (down from 35 to 40 hours per week).⁹

The Claimant's own statements show that the source and substance of this letter cannot be confirmed, as "he [the Claimant's supervisor] is no longer there" because "he went back to Africa and his brother took over the store."¹⁰ As such, the Claimant has not provided

⁷ The Claimant reported \$9,553 in adjusted gross income (AGI) in 2011, though her reported wages are unknown. Partial 2011 Individual Income Tax Return. The Claimant reported \$16,920 in wages and AGI in 2008, and \$11,492 in wages and \$6,865 in unemployment compensation (\$18,357 in AGI) in 2009. 2008 Individual Income Tax Return; 2009 Individual Income Tax Return.

⁸ Employer Letter, undated.

⁹ Employer Letter, undated.

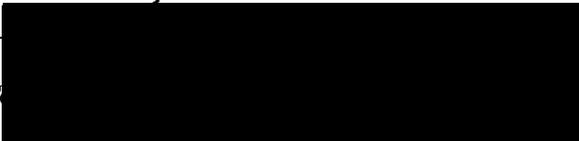
¹⁰ Reconsideration Hardship Letter, dated 15 October 2012.

independently verifiable documentation establishing that any financial loss that she may have suffered was in fact the result of the Deepwater Horizon incident.

5. *Conclusion*

For the reasons stated above, this claim is again denied on reconsideration because (1) the Claimant has failed to properly present \$5,000.00 of her claim to the RP/GCCF; (2) the Claimant has failed to provide documentation showing that she is excluded from or has opted out of the E&PD Settlement; (3) the Claimant has failed to establish a financial loss in the amount alleged; and (4) the Claimant has failed to establish that her alleged financial loss is due to the injury, destruction or loss of property or natural resources as a result of the discharge or substantial threat of discharge of oil.

This claim is denied upon reconsideration in its entirety.

Claim Supervisor: *NPF* 

Date of Supervisor's review: *11/27/12*

Supervisor Action: *Denied upon reconsideration*

Supervisor's Comments: