

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118

Fax: 202-493-6937

5890/DWHZ
Claim # N10036-0132
06 January 2011

Chicago, IL 60619

Re: Claim Number: N10036-0132

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0132.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	05 January 2011
Claim Number	N10036-0132
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$17,000.00

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 from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 19 November 2010, [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$17,000.00 to the National Pollution Funds Center (NPFCC) for reimbursement. [REDACTED] asserts that her sustained reduced tip income while employed at the [REDACTED] was due to the Deepwater Horizon oil spill.

[REDACTED] has been working for the [REDACTED] Hotel [REDACTED] located in [REDACTED] Alabama since June 2009. Prior to working at the [REDACTED] [REDACTED] was a college student during 2008 and part of 2009 and therefore was not employed¹. [REDACTED] has not indicated her employment capacity with her employer, but states that she received tip income in addition to regular wages. On Claimant's Optional OSLTF claim form she indicated that she "was out of work and had to find a source of income"². To the contrary, Claimant provided a letter dated 23 November 2010 stating that her work hours after the Deepwater Horizon incident were comparable to the same period of the prior year but her tip income had declined³. Based on the statements provided, Claimant is requesting compensation for reduced tip income from her employment at the [REDACTED].

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

¹ See, letter from Claimant dated 27 October 2010.

² See, field #9 of Claimant's OSLTF claim form dated 19 November 2010.

³ See, letter from Claimant dated 23 November 2010.

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 support her claim, the Claimant submitted the NPFC Optional OSLTF Claim Form dated 19 November 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF), 2009 Form W-2 and earnings summary for 2009 and 2010. Claimant filed an initial claim with GCCF and was assigned claimant identification # [REDACTED]. On 16 November 2010, the GCCF issued a denial to Claimant stating that she has not demonstrated a loss of profits or income as a direct result of the oil-spill.⁴

⁴ See, GCCF denial letter dated 16 November 2010.

B. NPFC Determination

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. The NPFC considered all the documentation submitted by the Claimant and has determined that Claimant has not proven her claimed losses.

Claimant provided a one-page document to support her wages earned from 05 June 2009 through 11 November 2010⁵. The document does not state the name of the employer or provide details regarding the number of hours worked. Based on the descriptions shown on the document, there is a column for "year to date" earnings and "this period" for the current pay period. The figures shown for the current period appear to have been reversed with the amounts for the "year to date" field since the current period's earnings are higher than the year to date amounts. Also, the assumed "year to date" figure does not correlate with the details shown for the periods worked during 2010.

Claimant began working for the [REDACTED] during June 2009. When comparing Claimant's earnings during 2009 and 2010 from June through November, Claimant earned \$2,549 during 2009 and \$2,187 during 2010, a difference of \$362. [REDACTED] is making a claim for \$17,000 in reduced tip income which is not supported by historical wage earnings produced. Based on the reported earnings, there is a differential of \$362, of which we do not have evidence that it is a direct result of the Deepwater Horizon incident. Claimant has not met her burden of proof that she sustained a reduction in tip income resulting from the Deepwater Horizon incident and is denied.

Claim Supervisor: [REDACTED]

Date of Review: 1/6/11

Supervisor's Comments: *Denial approved*

⁵ Claimant provided a document titled "Summary Statement" to support her earnings. The document does not state the name of the employer.