

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
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

Phone: [REDACTED]

E-mail: [REDACTED]

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5890

1/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7010 1060 0001 7082 5583

[REDACTED]
Luling, LA 70070

RE: Claim Number: N10036-0322

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 N10036-0322.

Mail reconsideration requests to:

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

Sincerely,
[REDACTED]

Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	January 6, 2011
Claim Number	N10036-0322
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$50,000.00

FACTS

On or about April 20, 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

On May 28, 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective May 30, 2010¹. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRF).

CLAIM AND CLAIMANT

On December 9, 2010 the claimant, [REDACTED] presented a loss of profits and impairment of earning capacity claim in the amount of \$50,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant is asserting that he was terminated from his work assignment with [REDACTED] Services because of the Deepwater Horizon incident.

The Claimant was employed through [REDACTED] Services, a staffing agency that provides staffing for support vessels that service the oil industry in the Gulf of Mexico. [REDACTED] Services trains and assigns riggers, cooks and galley hands. The Claimant was a cook aboard the offshore supply vessel [REDACTED]. The Claimant stated the [REDACTED] was providing support services to a drilling rig called the [REDACTED] at the time of the Deepwater Horizon

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

incident. The Claimant began working for [REDACTED] Services on December 2, 2009 and was ultimately terminated on June 7, 2010. The Claimant asserts that due the moratorium, his employer's services were no longer being requested by customers which led to his termination.

The Claimant filed an initial claim with the GCCF on October 13, 2010 and, as per the Claimant, was subsequently denied on October 28, 2010.

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 navigable waters and adjoining shorelines and the exclusive economic zone. Damages include damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, person property, or natural resources, Section 2702(b)(2)(E) of OPA.

The Oil Spill Liability Trust Fund (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. 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.

The claims regulations at 33 C.F.R. §136.231 and .235 provide the additional requirements for 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 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. 136.235, 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

A. Claimant's Submission

To support his claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim Form dated December 9, 2010.
- Claim correspondence with GCCF.
- Application for unemployment benefits dated September 27, 2010.
- 2009 Tax Return filing and a summary of total historical earnings with [REDACTED] Services.
- Separation notice from [REDACTED] Services dated June 7, 2010
- The Claimant provided his Individual Income Tax Return filing from 2009 which indicates total earnings of \$3,118. Claimant's earnings from January through June 2010, prior to his termination from [REDACTED] Services, total \$15,082. Claimant did not explain how he calculated his claimed losses of \$50,000.

B. NPFC Determination

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of profits resulted from the injury to, or destruction of, real or personal property or a natural resource. As indicated on the documentation provided by the Claimant, his primary form of employment at the time of the Deepwater Horizon incident was working aboard an offshore supply vessel as a cook. The offshore supply vessel the Claimant worked aboard, serviced drilling rigs located in the Gulf of Mexico. He asserts that he lost his job because of the moratorium. Thus, his loss of profits was allegedly the result of the moratorium, a directive issued by the Department of the Interior to suspend permitting and drilling activities on the Outer Continental Shelf in order that safety regulations could be implemented, and not the result of the Deepwater Horizon incident.

Further, and more importantly, the Claimant misrepresented to the NPFC that he lost his job because of the moratorium. The NPFC concluded after a discussion with Mr. [REDACTED] of [REDACTED] Services, that the Claimant was not terminated from his employment because of the Deepwater Horizon incident or the moratorium, but rather because he was arrested by the [REDACTED] Harbor Police for outstanding warrants².

² Email from Mr. [REDACTED] to [REDACTED] of 05JAN11

Mr. [REDACTED] also provided a Separation Notice Alleging Disqualification dated June 7, 2010, stating that the Claimant was terminated due to his arrest³. When comparing the separation notice provided by the Claimant to the one provided by Mr. [REDACTED] it is clear that the separation notice submitted by the Claimant has been altered.⁴ It appears the Claimant used correction fluid and altered the block titled "Other" in Section 6 and then checked "Lack of Work (RIF)." Also, it appears the Claimant used correction fluid to hide the explanation paragraph of the notice. The separation notice provided by the Claimant states, "[REDACTED] was a cook onboard for our customer's vessel, the [REDACTED] for the offshore workers. [REDACTED] worked on the vessel as a cook; not on the rig." The separation notice provided by [REDACTED] Services states, "[REDACTED] was arrested and taken into custody by [REDACTED] Harbor Police while onboard our customer's vessel, the [REDACTED]"

Under 33 C.F.R. 136.9, Falsification of claims. Persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. The Claimant has submitted an intentionally altered document in conjunction with his claim submission for which the NPFC was able to obtain from Claimant's previous employer, an unaltered copy of said document.⁵

Claim Supervisor: [REDACTED]

Date of Review: 1/7/11

Supervisor's Comments: *Denial approved*

³ Separation Notice Alleging Disqualification provided by Mr. [REDACTED] of 07JUN10

⁴ Separation Notice Alleging Disqualification provided by Claimant.