

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: [REDACTED]
E-mail: [REDACTED]
Fax: 202-493-6937

5890
3/17/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Mobile, AL 36607

RE: Claim Number: N10036-0344

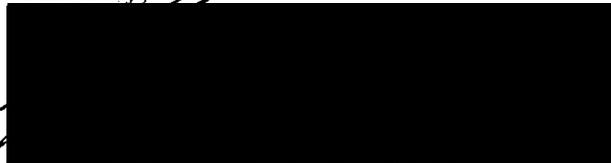
Dear [REDACTED]:

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 N10036-0344 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,



Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/12/2011
Claim Number	: N10036-0344
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$10,400.00

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. 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 August 23, 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 December 16, 2010, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$10,400.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he lost profits & earnings due to his hours being cut as a result of the Deepwater Horizon incident but never provided an explanation or information on his place of employment. In a letter dated January 10, 2011, the NPFC requested that the Claimant provide additional information to support his claim. Based on the W-2's provided by the Claimant, it appears as though he was employed by [REDACTED], LLC in Coden, Alabama in 2010 but no further information was provided.

The Claimant stated that he filed an Emergency Advance Payment claim with the GCCF and was subsequently denied. The NPFC verified this information with the GCCF. Claimant was provided Claimant ID # [REDACTED] and Claim [REDACTED] which was in fact denied by the GCCF.

The NPFC denied the claim on February 24, 2011, on the basis that the Claimant failed to provide the additional requested information to support his claim and establish that he had suffered a loss of profits.

REQUEST FOR RECONSIDERATION:

On March 7, 2011, the Claimant sent a request for reconsideration via facsimile dated March 7, 2010 to [REDACTED] stating he would like the NPFC to reconsider his claim. The Claimant provided hand written answers to the questions the NPFC posed in its official request for additional information dated January 10, 2011. The Claimant provided copies of his 2007 W2 earnings statement from [REDACTED] LLC, an illegible copy of his 2008 Wage and Income Transcript from the IRS, and a copy of his 2009 and 2010 W2s from [REDACTED] LLC. It is important to note that the Claimant did not provide any of his income tax returns for 2007, 2008, and 2009 including all attachments, Schedule C's as requested by the NPFC.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via facsimile on March 7, 2011. To support his request for reconsideration, the claimant provided hand written answers to the questions the NPFC posed in its official request for additional information dated January 10, 2011, copies of his 2007 W2 earnings statement from [REDACTED] LLC, an illegible copy of his 2008 Wage and Income Transcript from the IRS, and a copy of his 2009 and 2010 W2s from [REDACTED] LLC. It is important to note that the Claimant did not provide any of his income tax returns for 2007, 2008, and 2009 including all attachments, Schedule C's as requested by the NPFC. The Claimant was concrete truck driver for [REDACTED] LLC and requests \$10,400.00 in loss of profits and earnings. When the NPFC requested that he describe how he calculated his lost earnings, the Claimant's reply on reconsideration was "...the lost of 40 hours + no overtime because no major jobs were going to build anything in this area until thing get better on the coast area." Based on that explanation, the NPFC still is unable to determine how the Claimant derived at his sum certain.

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. A 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. The NPFC considered all the documentation submitted by the Claimant.

The NPFC performed another analysis of the financial information the Claimant did provide in his claim submission. Below is a table which identifies the Claimant's pre-spill earnings and the Claimant's post-spill earnings.

TABLE 1: Earnings by Year and Employer

YEAR	EMPLOYER	GROSS EARNINGS BASED ON W2 INFORMATION
2010	[REDACTED]	\$35,666.14
2009	[REDACTED]	\$6,606.40
2009	[REDACTED]	\$21,885.60
2008	[REDACTED]	\$36,524.00
2007	[REDACTED]	\$33,087.12

Based on the preceding table, the NPFC has determined that the Claimant's earnings were overall better after the Deepwater Horizon incident than prior to the incident. While the information originally provided was minimal, the NPFC does not see how the Claimant has calculated a loss of profits and earning capacity as a result of the spill.

The NPFC again denies the claim because (1) the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil and (2) the Claimant has failed to demonstrate a loss of profits and earnings. Therefore this claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: *3/17/11*

Supervisor Action: *Denial on reconsideration approved*