

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 9427

5890/DWHZ
26 August 2011

Maria Halvarengo


RE: Claim Number: N10036-1279

Dear Ms. Halvarengo:

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 N10036-1279 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

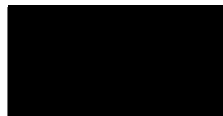
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1279.

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	N10036-1279
Claimant	Maria Halvarengo
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$27,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 04 August 2011, Maria Halvarengo (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$27,000.00 in lost profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant worked for the staffing company First Choice¹ located in Gulf Shores, Alabama. Claimant stated she worked as a maintenance/cleaner for beach front rental properties. The Claimant alleged that she was terminated due to the Deepwater Horizon oil spill.²

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

¹ Telephone conversation between NPFC staff and owner of First Choice 18 August 2011

² Telephone conversation between NPFC staff and Claimant 16 August 2011

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 undertake, 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 her claim, Claimant submitted:

- 1) OSLTF claim form dated 21 July 2011;
- 2) 2008 Form 1040 U.S. individual Income Tax Return;
- 3) 2009 Form 1040 U.S. individual Income Tax Return;
- 4) 2010 Form 1040 U.S. individual Income Tax Return.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$27,000.00.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment claim (EAP) with the GCCF. The EAP claim was assigned Claimant ID #3319582 and claim #377070. The EAP claim was denied.³ Additionally, the Claimant filed an Interim Payment claim (ICQ12011). The ICQ12011 claim was assigned GCCF #9236151. The ICQ12011 claim was also subsequently denied.⁴

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that Claimant lost her job as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC

³ GCCF online claim status 18 August 2011

⁴ GCCF online claim status 18 August 2011

Claim N10036-1279 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 377070 (EAP) and 9236151 (ICQ12011).

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 or destruction or loss of real or personal property or 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 the claim. The NPFC considered all the documentation submitted by the Claimant.

Claimant stated that she lost her job in either October or November 2010 due to the Deepwater Horizon oil spill.⁵ The Claimant submitted 2008 and 2009 tax returns indicating her wage earnings and an IRS Form 1040 Schedule C Profit or Loss from Business. The NPFC confirmed via a telephone conversation with the Claimant that she was paid in cash for only a single cleaning job and that she does not have an independent business.⁶

As part of its review of the Claimant's submission, the NPFC contacted the Claimant's former employer, First Choice. The owner of First Choice stated that he could not say with any specificity when the business started losing income or when it ultimately closed.⁷ NPFC staff specifically inquired as to whether the oil spill caused the owner to close his business. The owner stated that he was not sure of the actual cause of the closure of his business.⁸ Accordingly, the NPFC was unable to verify the cause of the Claimant's termination. The Claimant did not provide any other evidence of the causation of her alleged losses.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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*

Date of Supervisor's Review: *8/26/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ Telephone conversation between NPFC staff and Claimant 16 August 2011

⁶ Telephone conversation between NPFC staff and Claimant 16 August 2011

⁷ Telephone conversation between NPFC staff and owner of First Choice 18 August 2011

⁸ Telephone conversation between NPFC staff and owner of First Choice 18 August 2011