

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 9809

5890/DWHZ
29 August 2011

Mr. Shawn Anthony Duhon


Re: Claim Number: N10036-1280

Dear Mr. Duhon:

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 the claim number N10036-1280 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

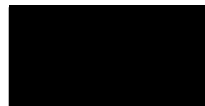
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1280.

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	N10036-1280
Claimant	Mr. Shawn Anthony Duhon
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 11 August 2011, Mr. Shawn Duhon (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant was hired as a "Purchasing Manager" for Tech Oil Products, Inc. (Tech Oil) on 12 April 2010 and was let go on 16 June 2010.² The Claimant alleged that lack of work resulting from the Deepwater Horizon oil spill caused the Claimant to lose his position at the company.³ In his submission to the GCCF, the Claimant stated, "I lost money due to moratorium in Gulf, because I couldn't find a full time job."⁴ Claimant seeks lost earnings in the amount of \$10,000.00.⁵

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.

¹ Optional OSLTF Claim Form dated 5 July 2011.

² Separation Notice provided by Claimant.

³ Optional OSLTF Claim Form dated 5 July.

⁴ Letter from GCCF to Claimant, written on pg. 3, 4 April 2011.

⁵ Optional OSLTF Claim Form dated 5 July 2011.

- (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 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 this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 5 July 2011;
- Letter from Claimant, authorizing the NPFC to access Claimant's GCCF submission;
- Separation Notice, showing separation on 16 June 2010 for "Lack of Work";
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 3 June 2011, Claimant ID 01126294, Claim # 9206228;
- Letter from GCCF to Claimant, 31 January 2011;
- GCCF Submission, received 11 August 2011;

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF for loss of profits and earnings. Claimant was assigned Claimant ID 1126294 and EAP was assigned claim number 3029264. The EAP claim was denied on 25 October 2010.

Claimant also submitted a Full Review Final (FRF) claim to the RP/GCCF, claiming \$5,000.00 in loss of profits and earnings, which was assigned claim number 9206228. This claim was denied on 3 June 2011.

On 4 August 2011, Claimant presented this claim for loss of profits and earnings capacity in the amount of \$10,000.00 to the NPFC. This claim is therefore denied in the amount of 5,000.00 as

this sum was not first presented to the RP/GCCF.⁶ The remainder of this determination shall only address this claim for \$5,000.00 in lost earnings, as first presented to the RP/GCCF in the FRF claim, which was denied on 3 June 2011.⁷

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, destruction or loss of real or personal property or of 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.

In order to prove a claim for loss of profits and earnings capacity, the Claimant must demonstrate (1) that he sustained a financial loss, and (2) a causal link between the Claimant's alleged loss and the Deepwater Horizon oil spill. The NPFC reviewed all information and documentation provided by Claimant. In the course of its review, the NPFC contacted a human resources representative of Tech Oil. The representative confirmed that the Claimant was laid off from his position with the company in June of 2010, but could not provide any insight as to whether or not his lay off was a result of effects of the oil spill.⁸ The NPFC then spoke with a general manager of the company, who stated that the company did lose business because of the drilling moratorium following the oil spill, but that the company was not directly affected by the oil spill.⁹

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss of \$10,000.00, and (2) that the 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 [REDACTED] Adication Division**

Date of Supervisor's Review: **8/29/11**

Supervisor's Action: **Denial approved**

Supervisor's Comments:

⁶ 33 C.F.R. § 136.103(a).

⁷ GCCF Claim Form, provided by GCCF.

⁸ PHONECON: NPFC Staff and Human Resources, Tech Oil Products, Inc. 24 August 2011.

⁹ PHONECON: NPFC Staff and Manager, Tech Oil Products, Inc.