

U.S. Department of
Homeland Security

United States
Coast Guard



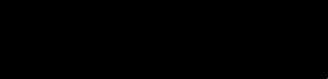
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 3212 3896

5890/DWHZ
Claim # N10036-1288
16 August 2011

Mr. Farid Eftekhari



Re: Claim Number: N10036-1288

Dear Mr. Eftekhari:

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 N10036-1288 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

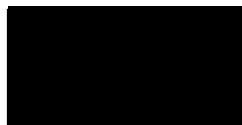
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1288.

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	N10036-1288
Claimant	Mr. Farid Eftekhari
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$24,000.00

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 10 August 2011, Mr. Farid Eftekhari (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$24,000.00 in loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a server at Huck Finn's Cafe in the French Quarter of New Orleans, LA.² According to the Claimant's submission, the Claimant was let go on 25 May 2010, due to "lack of business in the French Quarter area."³

Claimant was hired by Time Out Restaurant in New Orleans on 9 June 2010, but was let go from this position in July of 2010.⁴ The Claimant was then hired as a server at Rivers Edge Restaurant in New Orleans, in October of 2010, and was let go in January 2011.⁵ The Claimant asserted lost profits resulting from lost wages for the period from 25 May 2010 until the time this claim was presented to the RP/GCCF.

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.

¹ Optional OSLTF Claim Form dated 29 July 2011.

² Letter from Claimant to NPFC, 31 July 2011.

³ Letter from Alan Lenard, 28 July 2011.

⁴ Louisiana Workforce Commission, Separation Notice Alleging Disqualification, 14 July 2010

⁵ Letter from Rivers Edge Restaurant manager, noting that Claimant worked at the restaurant from 25 October 2010 to 17 January 2010.

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. § 136.105(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 29 July 2011;
- Letter from Claimant to NPFC, dated 31 July 2011;
- Copy of GCCF Determination, showing 5,000.00 final payment offer;
- Letter from Alan Lenard, stating that Claimant was let go due to effects of the oil spill, 28 July 2011;
- Letter from Huck Finn's Café, noting Claimant's loss of his position on 25 May 2010;
- Louisiana Workforce Commission, Separation Notice Alleging Disqualification, 14 July 2010;
- Letter from Rivers Edge Restaurant manager, noting that Claimant worked at the restaurant from 25 October 2010 to 17 January 2010;
- Letter from Claimant to GCCF 2 May 2011;
- Interim Payment and Final Payment Offer notices from GCCF;
- 2010 W-2 Forms;
- 2009 W-2 Forms.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim, a First Quarter Interim Claim (ICQ12011), a Third Quarter Interim Claim (ICQ32011) and a Re-Review of the ICQ32011, to the RP/GCCF. Claimant was assigned Claimant ID 03305981; EAP was assigned claim # 362844; ICQ12011 was assigned claim # 9246008; ICQ32011 was assigned claim # 9422345; and Re-Review of ICQ32011 was assigned claim # 9422360.

All claims presented to the RP/GCCF were paid in the following amounts: EAP, \$1,000.00; ICQ12011, \$335.42; and ICQ32011 paid \$2,603.11 on re-review, totaling \$3,938.53 in payments to the Claimant. The Claimant has not accepted a final offer from the RP/GCCF and alleged that he has not been sufficiently compensated for his losses.

On 10 August 2011, the Claimant presented this claim to the NPFC for \$24,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. This summary determination will address claims presented in Claimant's EAP, ICQ12011, ICQ32011 and Re-review of ICQ32011, for lost profits and earnings capacity resulting from the Deepwater Horizon oil spill, in the amount of \$24,000.00 as presented to the NPFC.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his 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 his claim.

In order to prove a claim for loss of profits and impairment of earnings capacity, the Claimant must demonstrate (1) an actual financial loss, and (2) that the loss was a result of the oil spill.

Claimant alleged that he is owed compensation due to various periods of unemployment resulting from the Claimant's loss of three different jobs.⁶ Specifically, the Claimant seeks compensation for the periods of (1) 25 May – 9 June 2010, (2) 12 July – 25 October 2010, and (3) 17 January 2011 – present.⁷ However, the Claimant alleged that the only position lost as a result of the Deepwater Horizon oil spill, was his first position at Huck Finn's Café, lost on 25 May 2010.⁸ This period of unemployment lasted from 25 May 2010 to 9 June 2010.⁹ According to the Claimant and his previous employers, he lost his second and third jobs for reasons unrelated to the oil spill.¹⁰

The Claimant has not provided sufficient documentation that would indicate that he lost his position at Huck Finn's as a result of the oil spill.¹¹ The Claimant's submission includes an

⁶ Claimant worked at Huck Finn's Café, Time Out Restaurant, and Rivers Edge Restaurant, all in New Orleans.

⁷ Letter from Huck Finn's Café, noting Claimant's loss of his position on 25 May 2010; Louisiana Workforce Commission, Separation Notice Alleging Disqualification, 14 July 2010; Letter from Rivers Edge Restaurant manager, noting that Claimant worked at the restaurant from 25 October 2010 to 17 January 2010.

⁸ PHONECON: Claimant and NPFC Staff, 12 Aug. 2011.

⁹ Letter from Huck Finn's Café, noting Claimant's loss of his position on 25 May 2010; Louisiana Workforce Commission Separation Notice Alleging Disqualification, 14 July 2010.

¹⁰ PHONECON: Claimant and NPFC Staff, 12 Aug 2011; PHONECON: Rivers Edge Restaurant and NPFC Staff, 11 Aug 2011.

¹¹ Email on 12 Aug 2011 to Claimant's former supervisor was not returned; PHONECONS: NPFC and Huck Finn's Café, 11 Aug. 2011, 12 Aug. 2011, 13 Aug. 2011.

email from Mr. Alan Lenard, the Claimant's alleged supervisor at Huck Finn's. The email stated that the Claimant was let go due to lack of work resulting from the Deepwater Horizon oil spill.¹² The NPFC contacted Huck Finn's on three occasions to attempt to verify this information and to verify that Mr. Lenard was an employee of the restaurant and the Claimant's supervisor. A representative of Huck Finn's stated that the Claimant was not let go for reasons related to the Deepwater Horizon oil spill and that Mr. Lenard was no longer employed with the restaurant.¹³ The NPFC also sent an email to Alan Lenard, asking for verification of the Claimant's reason for loss of his position, but did not receive a response.¹⁴

However, even assuming for the sake of argument that the Claimant had provided information to show that he lost his position as a result of the oil spill, Claimant has already been compensated \$3,938.53, which exceeds any earnings total that he might have made from 26 May to 8 June 2010.¹⁵

The NPFC reviewed all information and documentation provided by the Claimant. This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$24,000.00, 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 Claims Adjudication Division*

Date of Supervisor's Review: *8/16/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² Letter from Alan Lenard, stating that Claimant was let go due to effects of the oil spill, 28 July 2011.

¹³ PHONECON: NPFC Staff and Huck Finn's Café, 11, 12, 15 Aug 2011.

¹⁴ Email from NPFC to Alan Lenard, 12 Aug 2011.

¹⁵ EAP, \$1,000.00; ICQ12011, \$335.42; ICQ32011 paid \$2,603.11 on re-review, totaling \$3,938.53 in payments to Claimant; A letter from Claimant's employer indicates that Claimant was making approximately \$600.00 per week.