

U.S. Department of
Homeland Security

**United States
Coast Guard**



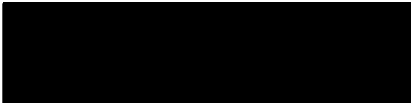
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7010 1060 0001 7082 8294

5890/DWHZ
29 August 2011

Mr. Kevin J. Buckel



Re: Claim Number: N10036-1307

Dear Mr. Buckel:

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 N10036-1307 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

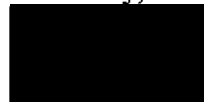
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1307.

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	N10036-0895
Claimant	Mr. Kevin J. Buckel
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$6,088.00

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 16 August 2011, Mr. Kevin J. Buckel (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$6,088.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

In March of 2010, the Claimant was hired to a full-time position, working as director of sales and marketing for Ship Island Excursions in Biloxi Mississippi.² The Claimant had previously been employed working part-time for the company.³ Ship Island Excursions offers ferry service to and from the island, which is located approximately eleven miles off the coast of Biloxi.⁴

Claimant alleged that his hours and wages were reduced as a result of the oil spill, and seeks lost profits in the amount of \$6,088.00 to compensate for losses allegedly sustained in the first and second quarters of 2011.⁵

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.

¹ Optional OSLTF Claim Form dated 8 August 2011.

² Letter from Claimant, undated.

³ Email from Claimant to NPFC, 8 August 2011.

⁴ Ship Island Excursions, http://msshipisland.com/About_Us.html, (Accessed on 23 August 2011).

⁵ Optional OSLTF Claim Form, dated 8 August 2011.

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, 8 August 2011;
- Email from Claimant to the NPFC, describing losses during first and second quarters of 2011, 8 August 2011;
- Undated document written by Claimant, noting presence of oil on Gulf Island National Seashore, including West Ship Island;
- Documents describing calculation of losses, undated;
- GCCF Interim Payment Claim Form, claiming lost profits and wages of \$6,018.00, Claimant ID# 1151635;
- Letter from Claimant to GCCF, noting denial of GCCF final offer of \$5,000.00, 1 March 2010;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 3 August 2011;
- GCCF Determination Letter on Final Payment Claim, 24 February 2011;
- Election Form for Determination Letter on Lost Earnings and Income Claim, 24 February 2011;

- GCCF Re-Review Determination Letter on Interim/Final Payment Claim, 14 April 2011;
- Re-Review Determination Letter on Final Payment Claim, 15 July 2011;
- Determination Letter on Interim Payment/Final Payment Claim, 3 August 2011;
- Pay Stubs, January – 24 June 2011.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF for lost wages and earnings in the amount of \$3,360.00. Claimant was assigned ID 1151635 and the EAP claim was assigned claim # 13250. The EAP claim was paid in the amount of \$3,400.00 on 2 August 2010.

Claimant then presented a Second Quarter Interim Payment Claim (ICQ22011) for \$6,018.00 in lost profits and earnings, a Third Quarter Interim Payment Claim (ICQ32011), and a Full Review Final (FRF) Claim to the RP/GCCF. ICQ22011 was assigned claim # 9361534; ICQ32011 was assigned claim # 9422009, and; FRF was assigned claim # 9027458.

As of the date of this determination, the Claimant's ICQ22011 and ICQ32011 claims for lost wages and earnings have been denied and are in the process of being Re-Reviewed.⁶ On 3 August, 2011, the Claimant was offered Final Payment of \$5,000.00, which the Claimant has not accepted to date.⁷

On 16 August 2011, Claimant presented this claim for loss of profits and impairment of earnings capacity, in the amount of \$6,088.00. An email from the Claimant to the NPFC indicated that this claim to the NPFC is for lost wages in the first and second quarters of 2011, as first presented to the GCCF in ICQ22011. Therefore, this summary determination shall address Claimant's ICQ22011 for loss of profits and earnings capacity damages in the amount of 6,088.00, as presented first to the RP/GCCF.⁸ This determination does not address lost wages claimed to the RP/GCCF in Claimant's ICQ32011.

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 that (1) that his income was reduced,⁹ and (2) that the reduction of income was due to the Deepwater Horizon oil spill.

Claimant works as the Director of Sales and Marketing for Ship Island Excursions. Claimant alleged that his income for the first and second quarters of 2011 has been reduced because Ship Island Excursions has scaled back advertising efforts in the wake of the oil spill.¹⁰

Claimant alleged that because Ship Island Excursions is required by the National Park Service (NPS) to post a "visitor advisory" on its website and ticket office, warning visitors of the

⁶ Information available on GCCF site, as of 23 August 2011; PHONECON: Claimant and NPFC Staff, 21, 22 2011.

⁷ Information available on GCCF site, as of 23 August 2011.

⁸ Claim to the RP/GCCF for \$6,018.00.

⁹ 33 C.F.R. § 136.233(b).

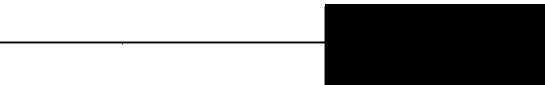
¹⁰ Email from Claimant to NPFC, 8 August 2011.

possible presence of tar balls on the island, the company has reduced their marketing and sales budget.¹¹ Claimant further alleged that the reduction in the budget has caused him a loss of income, specifically stating:

I will be experiencing a loss of income well into the 2012 season because as long as the NPS continues the "visitor advisory" on the island, my department will be scaled down. The company cannot reasonably invest in marketing and sales budget only to have the visitor read a visitor advisory.¹²

To support his claim that the oil spill resulted in a reduction of the Claimant's working hours, the Claimant provided 2011 pay stubs, showing that the Claimant had been working approximately 22 – 30 hours each week in the first and second quarters of 2011.¹³ The NPFC requested that the Claimant also provide pay stubs from March/April 2010, in order to determine whether or not the Claimant was billing full-time (40 hours) in the months he was employed with Ship Island prior to the oil spill.¹⁴ However, the Claimant was unable to provide such documentation and stated that he never worked a full-time schedule before the oil spill because, according to the Claimant, the company was still in "Katrina Recovery."¹⁵ Because the Claimant has not demonstrated that he ever worked a full-time schedule with Ship Island Excursions, the Claimant has not sufficiently proven that the oil spill resulted in a reduction in his hours for the First and Second Quarters of 2011.

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 \$6,088.00, 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: *8/29/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹¹ Email from Claimant to NPFC, 8 August 2011.

¹² Email from Claimant to NPFC, 8 August 2011.

¹³ 2011 Pay Stubs provided by Claimant.

¹⁴ PHONECONS: Claimant and NPFC Staff, 21, 22, August 2011.

¹⁵ Email from Claimant to NPFC Staff, 23 August 2011.