

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
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Arlington, VA 20598-7100
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Phone: 1-800-280-7118
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2939

5890/DWHZ
Claim# N10036-1327
3 October 2011

Sevasti Karavas


RE: Claim Number: N10036-1327

Dear Ms. Karavas:

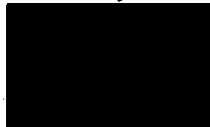
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1327 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-1327.

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 | N10036-1327 |
| Claimant | Sevasti Karavas |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$4,400.00 |

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 23 August 2011, Sevasti Karavas (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$4,400.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant works for Catherine's Linen Shop located in Tarpon Springs, Florida.¹ The Claimant suffered consistent declines in her wages as shown on her W-2 Wage and Tax Statements from 2008 to 2010. The Claimant alleged an impairment of earnings capacity in the amount of \$4,400.00.² This amount represents the difference in earnings as shown between her 2010 W-2 and 2009 W-2 from Catherine's Linen Shop.³

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.

¹2008, 2009, and 2010 W-2 from Catherine's Linen Shop

² 2009 W-2 \$8,800.00 minus 2010 W-2 \$4,400.00 equals \$4,400.00

³ 2009 and 2010 W-2 from Catherine's Linen Shop

- (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 her claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 15 August 2011
- 2) GCCF Denial Letter on Interim payment/Final payment Claim
- 3) 2008 W-2 from Catherine's Linen Shop
- 4) 2009 W-2 from Catherine's Linen Shop
- 5) 2010 W-2 from Catherine's Linen Shop

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$4,400.00.

On 29 August 2011, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed that the letter was delivered 03 September 2011.⁴

⁴ USPS tracking # 7011 1150 0000 4666 9663

Prior to presenting her claim to the NPFC, Claimant filed an Interim claim (ICQ32011) with the GCCF on 29 July 2011 in the amount of \$4,400.00.⁵ She was assigned Claimant ID #3534403 and claim #9427603. This claim was denied on 11 August 2011.⁶ Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of her claim before the NPFC, i.e., that she suffered an impairment of earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1327 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim #9427603 (ICQ32011).

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.

After an initial review of the claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim.⁷ The letter requested, among other things, a statement from the Claimant's employer, Catherine's Linen Shop, explaining how the company was impacted by the Deepwater Horizon oil spill and whether any impact from the oil spill forced the company to reduce the Claimant's hours and or pay. To date, the Claimant has not responded to the request.⁸ The NPFC therefore proceeded to evaluate the claim with the documentation Claimant originally submitted.

The Claimant submitted W-2 Wage and Tax Statements from Catherine's Linen Shop and calculated her alleged loss (\$4,400.00) as being the difference between her 2009 and 2010 wages.⁹ The NPFC requested copies of the Claimant's tax returns for 2008, 2009, and 2010 to verify her earnings. To date, the Claimant has failed to respond to the request.¹⁰ Furthermore, the Claimant was asked to provide a timeline of her work history and information related to any unemployment collected or other part time work that may have mitigated her alleged damages. The Claimant has failed to provide any documentation or answer the NPFC's questions in regard to calculating her alleged impairment of earnings.¹¹ Accordingly, the Claimant has not established her sum certain presented to the NPFC by a preponderance of the evidence.

With respect to the causation of the Claimant's alleged damages, the NPFC requested a letter of explanation by the employer indicating how the Claimant's alleged damages resulted from the Deepwater Horizon oil spill.¹² Additionally, the NPFC asked for the Claimant to address how the oil spill caused her alleged damages.¹³ To date neither question has been responded to by the

⁵ Report from the GCCF dated 21 September 2011.

⁶ GCCF Denial Letter dated 10 August 2011.

⁷ The letter was sent on 29 August 2011.

⁸ The letter was delivered to Claimant's address on record on 03 September 2011.

⁹ 2009 W-2 \$8,800.00 minus 2010 W-2 \$4,400.00 equals \$4,400.00.

¹⁰ NPFC request for additional information number three.

¹¹ NPFC request for additional information numbers two and five.

¹² NPFC request for additional information numbers one.

¹³ NPFC request for additional information number one.

Claimant or the employer. The Claimant has provided no other evidence as to the causation of her alleged loss. As such, the Claimant has not established by a preponderance of the evidence that her alleged loss of earnings was due to the oil spill.

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: *10/2/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: