

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 9649

5890/DWHZ
Claim # N10036-1329
31 August 2011

Walter T. Chevis


Dear Mr. Chevis:

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 N10036-1329 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

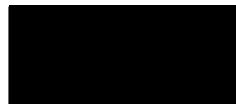
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1329.

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	N10036-1329
Claimant	Walter T. Chevis
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$4,836.00

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 24 August 2011, Walter T. Chevis (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$4,836.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a cook at Fezzo's Seafood, Steakhouse and Oyster Bar (Fezzo's). Fezzo's is located in Scott, Louisiana.¹ Fezzo's serves only lunch and supper. According to a manager at Fezzo's, many of Fezzo's customers live in the area and work in the oil fields in the Gulf.² The Claimant stated that after the Deepwater Horizon oil spill "business became slow and my hours were cut."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.

¹ Source Google Maps

² PHONECON between Megan Leger at Fezzo's and NPFC Staff dated 25 August 2011

³ OSLTF Claim Form signed by Claimant on 14 August 2011

- (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 signed by Claimant on 14 August 2011
- Letter from Fezzo's Seafood, Steakhouse and Oyster Bar signed by Megan Leger dated 20 April 2011
- Pay stubs from Fezzos II, Inc for 12 February 2010 to 03 March 2010
- Pay stubs from Fezzos II, Inc for 19 April 2010 to 24 September 2010
- W-2s Wage and Tax Statement for 20092010 from Fezzos II Inc.
- Form 1040A US Individual Income Tax Return for 2008
- GCCF Form 2000-C Gulf Coast Claims Facility Form dated 13 October 2010

Claimant seeks lost earnings and wages in the amount of \$4,836.00.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF. The claim was assigned Claimant ID #3161070 and claim #215882. The Emergency Advance Payment claim was denied on 09 November 2010.⁴

⁴ GCCF Denial Letter dated 09 November 2010

Additionally, Claimant filed a Full Review Final (FRF) claim with the GCCF. The claim was assigned claim #9039545. The FRF claim was denied on 28 July 2011.⁵

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., the Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1329 considers and addresses the loss of earnings in all claims presented to the Responsible Party, specifically: GCCF Claim #215882 (EAP) and #9039545 (FRF).

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.

Claimant's W-2 for 2009 from Fezzo's indicated earnings of \$30,443.87.⁶ The Claimant's W-2 for 2010 from Fezzo's indicated earnings of \$27,683.60.⁷ The difference between the two years is \$2,760.27.⁸ The Claimant provided a sum certain for loss of earnings in the amount of \$4,836.00.⁹ As part of his submission, the Claimant provided a letter from Fezzo's stating that his hours were reduced from 40 to 30 hours a week for the period from the end of April 2010 to mid November 2010.¹⁰ Using the dates most favorable to the Claimant of 20 April 2010 to 16 November 2010, the Claimant suffered a reduction of hours over a period some 30 weeks (i.e. 210 days). The estimated reduction in the Claimant's pay calculated at 10 hours a week for 30 weeks at a rate of \$13.00 an hour is \$3,900.00.¹¹ However, as stated above, the Claimant's W-2 statements showed a reduction of \$2,760.27 between 2010 and 2009. This amount is irreconcilable to the sum certain of \$4,836.00 submitted to the NPFC. Accordingly, the Claimant has not established his sum certain presented to the NPFC by a preponderance of the evidence.

The Claimant's letter from Fezzo's stated that Fezzo's cut the Claimant's hours "due to a decline in business."¹² As part of its review of the Claimant's submission, the NPFC contacted Fezzo's via telephone on 25 August 2011.¹³ The Fezzo's employee who provided the subject letter agreed with the Claimant's assertion that business dropped after the after the Deepwater Horizon oil spill.¹⁴ The employee also stated that many of Fezzo's customers "work in the oil fields" and that Fezzo's has filed an EAP and Interim Claims with the GCCF.¹⁵ However, while the Claimant's employer appears to agree with the Claimant's contention that the oil spill caused a reduction to the Claimant's scheduled hours, Fezzo's has not provided any specific information

⁵ GCCF Denial Letter dated 28 July 2011

⁶ 2009 W-2 Wages from, Fezzo's II Inc.

⁷ 2010 W-2 Wages from Fezzo's II Inc.

⁸ \$30,443.87 minus \$27,683.60 equals 42,760.27

⁹ Optional OSLTF claim form signed by Claimant 14 August 2011

¹⁰ Letter from Fezzo's Seafood, Steakhouse, and Oyster Bar signed by Megan Leger dated 20 April 2011

¹¹ 30 weeks multiplied by \$13.00 an hour multiplied by 10 hours a week equals \$3,900.00

¹² Letter from Fezzo's Seafood, Steakhouse and Oyster Bar signed by Megan Leger dated 20 April 2011.

¹³ PHONECON between Megan Leger at Fezzo's and NPFC Staff dated 25 August 2011

¹⁴ PHONECON between Megan Leger at Fezzo's and NPFC Staff dated 25 August 2011

¹⁵ PHONECON between Megan Leger at Fezzo's and NPFC Staff dated 25 August 2011. According to the employee, the Fezzo's EAP claim was denied but the Interim claim is still pending before the GCCF.

which would support the Claimant's contention. Claimant has provided no other evidence as to the causation of his alleged loss. As such, the Claimant has not established by a preponderance of the evidence that his alleged loss of earnings was due to the oil spill.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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:


Claims Adjudication Division

Date of Supervisor's Review: *31 August 2011*

Supervisor's Action:

Denial approved

Supervisor's Comments: