U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

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5890
11/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 6265

John Colasante Jr.
[redacted]

RE: Claim Number: N10036-1332

Dear Mr. Colasante Jr.:

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 N10036-1332 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Per your request, the NPFC is attaching your original photographs that were provided.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[redacted]

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1332
Claimant	: John Colasante Jr.
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $70,000.00

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 25 August 2011, Mr. John Colasante Jr., (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $55,000.00 in loss of profits and impairment of earnings capacity, $5,000.00 in real or personal property damages, and $10,000.00 in natural resource damages, totaling $70,000.00 in claimed damages.[1]

Following clarification of OPA damage and removal costs categories, the Claimant clarified that he is seeking loss of profits and impairment of earnings capacity damages, and not real or personal property or natural resource damages.[2] The claimed amount is $55,000.00.

The Claimant alleged that he was living in Lafayette, Louisiana at the time of the oil spill and was working as a deckhand on a shrimp boat.[3] The Claimant alleged that he was let go "after 20 April 2010" and moved to Los Angeles shortly thereafter.[4]

The Claimant asserted that he earned between "$4,800.00 and $5,200.00," which he was paid each month in cash.[5] The Claimant alleged that due to the loss of his position, he lost income in the amount of $55,000.00.[6]

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment claim (EAP) to the RP/GCCF seeking loss of profits and impairment of earning capacity damages.[7] The Claimant was assigned Claimant ID 1006440 and EAP was assigned Claim # 3004298.[8] This claim was denied on 4 December 2010.[9]

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[1] Optional OSLTF Claim Form, dated 17 August 2011
[2] Response to NPFC Request for Additional Information, dated 20 September 2011.
[3] Optional OSLTF Claim Form, dated 17 August 2011.
[4] Response to NPFC Request for Additional Information, dated 20 September 2011.
[5] Response to NPFC Request for Additional Information, dated 20 September 2011.
[6] Optional OSLTF Claim Form, dated 17 August 2011.
[7] GCCF Claimant Status, accessed on 28 September 2011.
[8] GCCF Claimant Status, accessed on 28 September 2011.
[9] GCCF Claimant Status, accessed on 28 September 2011.

The Claimant also presented a Full Review Final claim (FRF) to the RP/GCCF, seeking loss of subsistence use damages, as well as loss caused by damages to a natural resource.[10] The FRF claim was assigned claim # 9108612, and was subsequently denied.[11]

The NPFC may adjudicate this claim to the extent that this claim has been presented to and denied by the RP/GCCF. Any amount of damages now presented to the NPFC, which were not first presented to the RP/GCCF are denied for improper presentment.[12]

The NPFC issued its denial determination on October 3, 2011 on the grounds that Claimant had not demonstrated (1) that he sustained an actual loss or reduction in income, and (2) that any loss of income sustained by the Claimant was due to the Deepwater Horizon oil spill.

In his original claim the Claimant alleged that he sustained a loss of income when he was let go from his position as a deck hand on a shrimp boat in the Gulf of Mexico, following the Deepwater Horizon oil spill.[13] In a letter dated 30 August 2011, the NPFC requested that the Claimant provide additional information to support this claim, including pay stubs or tax returns to demonstrate his earnings before the Deepwater Horizon oil spill.[14] The Claimant responded by stating that he does not have pay stubs or federal tax returns because he was "paid in cash" in the amount of $4,800 - $5,200.00 per month.[15] The Claimant further stated that he could not contact his former employer who is "living on his boat . . . and left no forwarding address."[16]

Thus the claim was denied because the Claimant failed to meet his burden to prove (1) that he sustained a loss in profits in the amount of $55,000.00, 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.

REQUEST FOR RECONSIDERATION and CLAIMANT'S ANALYSIS:

The Claimant requested reconsideration which was received by the NPFC on November 1, 2011 via regular mail. The Claimant only provided a one-page letter requesting reconsideration. The Claimant provided no new information with his request for reconsideration. The only argument the Claimant made on reconsideration was that based on all the information he has provided to the NPFC and the GCCF, he should be approved for something and he requests that the NPFC re-review his file. The NPFC obtained a full copy of the Claimant's file from the GCCF on November 18, 2011.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted

[10] GCCF Claimant Status, accessed on 28 September 2011.
[11] GCCF Claimant Status, accessed on 28 September 2011.
[12] 33 C.F.R. § 136.133(a).
[13] Response to NPFC request for additional information, 20 September 2011.
[14] NPFC Request for additional information, 30 August 2011.
[15] Response to NPFC request for additional information, 20 September 2011.
[16] Response to NPFC request for additional information, 20 September 2011.

by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a ***de novo*** review of the entire claim submission upon reconsideration, including the information the NPFC obtained from the GCCF. The NPFC considered all information presented by the Claimant on reconsideration and also reviewed the information obtained from the Claimant's GCCF file.

Below is a listing of the documents provided by the GCCF:

- Copy of a GCCF letter dated January 31, 2011 requesting additional information;
- Copy of a GCCF letter dated March 29, 2011 stating they could not verify the Claimant's social security number;
- Copy of Form SSA-89 from the Social Security Administration confirming Claimant's social security number;
- Copy of a letter from Claimant dated 4/11/11 confirming he made an error on his social security number when he submitted his GCCF claim;
- Copy of Claimant's social security card and drivers license;
- Copy of Claimant's online GCCF claim submission dated 9/1/10;
- Copy of a handwritten letter dated 9/1/10 from Mr. Thomas Marino stating the Claimant worked for him for 3 years, was paid in cash and made around $6,000.00 - $7,000.00 a month;
- Copy of a handwritten letter dated 10/13/10 from Mr. Thomas Marino stating the Claimant worked for him since 2008 and made between $4,500.00 -$5,000.00 a month;
- Copy of Claimant's online GCCF claim submission dated 12/20/1/10;
- Copy of letter from Claimant to the GCCF dated 4/27/11 whereby he tried to clarify identified discrepancies by the GCCF;
- Copy of letter from Claimant dated 9/1/11 to the GCCF;
- Copy of a letter from Claimant to the GCCF dated 7/29/10 entitled "Letter of Hardship";
- Copy of letter from ESIS to Claimant dated 7/24/10 requesting a contact number for Claimant;
- Copy of GCCF letter dated 10/28/11 to Claimant entitled "Follow up to previous denial letter";
- Copy of letter from GCCF dated 12/4/10 advising claim submission is deficient;
- Copy of letter from GCCF dated 10/5/10 advising claim submission is deficient;
- Copy of letter from GCCF dated 4/26/11 entitled "Deficiency Letter on Interim Payment/Final Payment Claim";
- Copy of GCCF letter dated 9/16/11 entitled "Denial letter on Interim Payment/Final Payment Claim".

Upon review of all information provided and obtained, the NPFC again denies the claim on reconsideration. The Claimant asserts that he has been paid in cash therefore he has no pay stubs, has not filed income taxes as required by law, and the Claimant has provided no bank

statements that would demonstrate monthly deposits to support the amount he asserts he makes a month. As such, the Claimant has failed to demonstrate any income history (past or present) which would enable the NPFC to confirm whether or not the Claimant had any losses or the amount of such loss.

While the Claimant did have two letters purportedly written by a previous employer, Mr. Marino, the NPFC is unable to corroborate actual earnings made because the Claimant provided no tax returns, pay stubs or other financial documentation, which is the basis for any claimed losses. Further, the two letters from Mr. Marino stated different purported monthly incomes for the Claimant, i.e., $4.500 to $5,000 per month and $6,000 to $7,000 per month.

Based on the foregoing, this claim is again denied on reconsideration. Due to the insufficiency of the information provided by the Claimant either in his original claim submission or on reconsideration, the NPFC is unable to determine the amount of losses claimed by the Claimant or that any such loss was due to the Deepwater Horizon oil spill.

This claim is denied upon reconsideration.

Claim Supervisor: *T* [redacted]

Date of Supervisor's review: ***11/28/11***

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments: