

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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5890  
11/15/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 6234

Adolph Herbert  


RE: Claim Number: N10036-1336

Dear Mr. Herbert:

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 N10036-1336 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

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,



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

ENCL: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1336
Claimant	: Adolph Herbert
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$20,000.00

### **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 17 August 2011, Adolph Hebert (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$10,000.00 for loss of profits and impairment of earnings capacity and \$10,000.00 for loss of subsistence use to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill. His total loss for both claims submitted to the NPFC is \$20,000.00.

The Claimant asserted that he lost earnings from not being able to sell "fish" as a result of the Deepwater Horizon oil spill.<sup>1</sup> The Claimant further alleged damages to subsistence use because as he stated the "crawfish were dying" which he usually puts in his freezer each year.<sup>2</sup>

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment claim (EAP) for lost earnings or profits with the GCCF on 20 October 2010 in the amount of \$7,875.00.<sup>3</sup> He was assigned Claimant ID #3242217 and claim #297597. This claim was denied on 10 December 2010.<sup>4</sup> Additionally, Claimant filed an Interim claim (ICQ12011) for lost wages or earnings with the GCCF on 27 January 2011, he was assigned GCCF #9251483.<sup>5</sup> ICQ12011 was denied on 13 June 2011.<sup>6</sup> Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of the portion of their claim for lost profits and impairment of earnings capacity before the NPFC i.e., that the Claimant lost earnings as a result of the Deepwater Horizon oil spill.

The NPFC deems each of Claimant's two denied GCCF claims for lost earnings or profits to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1336 considers and addresses the earnings claimed in both of the claims presented to the RP, specifically; GCCF Claim #'s 297597 (EAP) and 9251483 (ICQ12011).

<sup>1</sup> Optional OSLTF claim form dated 08 August 2011.

<sup>2</sup> Letter of explanation signed by the Claimant undated.

<sup>3</sup> Report from the GCCF dated 06 October 2011.

<sup>4</sup> GCCF Denial Letter dated 10 December 2010.

<sup>5</sup> Report from the GCCF dated 06 October 2011.

<sup>6</sup> GCCF Denial Letter dated 13 June 2011.

However, as of the date of this determination the Claimant has not submitted a subsistence claim to the RP. Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the RP.

#### **REQUEST FOR RECONSIDERATION:**

The Claimant requested reconsideration which was received by the NPFC on November 10, 2011 via facsimile. The Claimant provided the following documentation on reconsideration:

- One page of responses to the NPFC's request for additional information letter dated September 28, 2011;
- A copy of his IRS Transcript for his 2008 Income Taxes;
- A copy of all trip tickets for 2008 which total \$10,520.25 as reported;
- A copy of a Turbo Tax summary coversheet for 2009 although his income tax return was not attached;
- A copy of Form 1099-G for \$870.22 which was for a taxable grant from the Louisiana Department of Wildlife and Fisheries;
- A copy of all trip tickets for 2009 which total \$7,028.10;
- A copy of expense receipts totaling \$464.25 for 2009;
- A copy of an unsigned 2010 Form 1040 Income Tax Return;
- A copy of Form 1099-MISC for \$764.85 for crawfish sold in 2010;
- A copy of the one trip ticket for 2010 which totaled \$764.85;
- A copy of Claimant's Form SSA-1099 non taxable social security benefits paid in 2010.

#### **REQUEST FOR RECONSIDERATION and CLAIMANT'S CLAIM ANALYSIS:**

The NPFC issued its initial denial determination on November 3, 2011. The Claimant and his authorized agent, Mrs. Landry, called the NPFC on November 9, 2011 and stated that they would be faxing additional information to the NPFC in order to reconsider the claim. The Claimant made no official assertions on reconsideration but rather had his agent, Ms. Landry fax the information to the NPFC that stated the Claimant is an 83 year old and they hope the NPFC could go through the claim as soon as possible. The Claimant provided no additional arguments on reconsideration therefore the NPFC assumes the Claimant is requesting reconsideration of the lost profits portion of the claim submission only since the subsistence portion of the claim was never properly presented to the RP./GCCF pursuant to the governing claims regulations therefore the \$10,000.00 associated with subsistence remains denied without further consideration.

#### **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 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 typed letter and additional documentation provided with the request for reconsideration.

The NPFC considered all information presented by the Claimant on reconsideration. Upon review of the partial financial documentation provided by the Claimant, the NPFC has made the following conclusions:

- The Claimant provided no arguments or information regarding the subsistence portion of his claim in the amount of \$10,000.00 therefore the NPFC again denies that portion of the claim since the Claimant has not properly presented those costs to the RP/GCCF pursuant to the governing claims regulations found at 33 CFR 136.103(a) as originally stated;
- The Claimant provided a copy of his 2008 IRS Tax Transcript, a copy of a Turbo Tax coversheet for his 2009 taxes although he did not provide a complete copy of the Income Tax filing, and he provided an unsigned copy of his 2010 Income Tax filing. The NPFC can confirm to some extent that the Claimant's wages have decreased from 2008 to 2009 and then again from 2009 to 2010 although the NPFC cannot confirm the loss in income was a direct result of the Deepwater Horizon oil spill incident;
- The Claimant responded to the questions posed by the NPFC in its letter dated September 28, 2011 although based on the responses provided, the Claimant has not provided any documentation to substantiate that the oil spill caused the crawfish to die while still in the traps therefore it is unclear what caused the increased mortality of the crawfish which directly impacted the Claimant's ability to earn income from the sale of seafood.

Based on the foregoing, this claim is again denied on reconsideration. Due to the insufficiency of the information provided on reconsideration, the NPFC is unable to draw any conclusion regarding losses the Claimant experienced because of the increased mortality rate of the crawfish while still in the traps or that such a loss was due to the oil spill and as such, there is also no way for the NPFC to relate the Claimant's alleged loss of income from sales to the Deepwater Horizon oil spill.

Additionally, because the Claimant's income tax records were not complete, the NPFC is unable to determine what the Claimant's exact cost of goods sold were for 2008 - 2010, what the exact expenses incurred for 2008 - 2010 were, or what the saved expenses were for 2010 and as such, the NPFC is unable to determine what the alleged loss was.

Based on the foregoing, the Claimant has again failed to demonstrate a loss in the amount claimed or proven that any alleged loss was 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.

This claim is denied upon reconsideration.

Claim Supervisor 

Date of Supervisor's review: *11/15/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: