

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 6457

5890/DWHZ
14 October 2011

Kris Joyner


RE: Claim Number: N10036-1345

Dear Mr. Joyner:

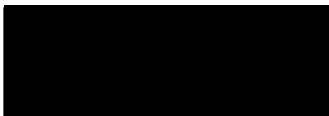
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1345 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-1345.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100


Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1345
Claimant	Kris Joyner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 29 August 2011, Kris Joyner (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$15,000.00 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 worked for Hampton Automotive Group part-time from 2004 through 12 June 2010.¹ The Claimant has a full-time teaching position with the Okaloosa County, Florida. The Claimant's alleged loss only pertains to his part time employment at Hampton Automotive Group. The Claimant alleged he was laid off at Hampton Automotive Group due to the downturn in the economy affecting the greater Pensacola, Florida, area due to the Deepwater Horizon oil spill.²

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 Employment letter from Hampton Nissan undated.

² Optional OSLTF claim form dated 10 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 his claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 10 August 2011
- 2) Letter from the Claimant to the GCCF explaining nature of claim dated 09 May 2010
- 3) NY Times article titled Gulf of Mexico Oil Spill (2010) dated 19 August 2011
- 4) Employment letter from Hampton Nissan undated
- 5) Hampton Automotive Groups Employee Payroll Inquiry from 01 February 2008 through 04 June 2010
- 6) 2008 W-2 from Hampton Automotive Group
- 7) 2008 W-2 from Okaloosa District Schools
- 8) 2009 W-2 from Hampton Automotive Group
- 9) 2010 1099-MISC from Hampton Automotive Group
- 10) 2008 Form 1040 U.S. Individual Income Tax Return
- 11) 2009 Form 1040 U.S. Individual Income Tax Return
- 12) 2010 Form 1040 U.S. Individual Income Tax Return

- 13) GCCF denial letter on Interim Payment/Final Payment claim dated 13 August 2011
- 14) Social Security Statement dated 04 November 2010

On 09 September 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 the letter was delivered on 16 September 2011.³

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$15,000.00.

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP1) for lost wages/earnings with the GCCF on 19 October 2010 in the amount of \$13,500.00.⁴ He was assigned Claimant ID #3234318 and claim #289655, this claim was denied on 09 December 2010.⁵ Additionally, Claimant filed an Emergency Advance Payment (EAP2) for subsistence, GCCF assigned him claim #289658, and this claim was denied 09 May 2011.⁶ Lastly the Claimant filed an Interim claim (ICQ22011), the GCCF assigned the Claimant claim #9361558; this claim was denied on 12 August 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the two lost profits and impairment of earnings capacity claims submitted to the GCCF are the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied loss of profits and impairment of earnings capacity GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim # N10036-1345 considers and addresses the earnings claimed in both loss of profits and impairment of earnings capacity claims presented to the responsible party, specifically; GCCF Claim #'s 289655 (EAP1) and #9361558 (ICQ22011). GCCF claim #289658 for subsistence will not be addressed by the NPFC, since the claim was not presented to the NPFC.

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.⁸ The letter requested, among other things, a statement from the Claimant's employer, Hampton Automotive Group, explaining how the decision to terminate the Claimant resulted from the Deepwater Horizon oil spill rather than generally declining economic conditions. To date, the Claimant has not responded to the

³ USPS tracking #7011 1150 0000 4636 4636.

⁴ Report from the GCCF dated 06 October 2011.

⁵ GCCF Denial Letter dated 09 December 2010.

⁶ GCCF Denial Letter dated 09 May 2011.

⁷ Report from the GCCF dated 06 October 2011.


⁸ The letter was sent on 09 September 2011.

request.⁹ The NPFC therefore proceeded to evaluate the claim with the documentation the Claimant originally submitted.

The evidence does not establish that the Claimant lost \$15,000.00 in earnings as a result of the Deepwater Horizon oil spill. For example, the Claimant earned \$14,667.68 in 2009¹⁰ which was a forty-one percent decline¹¹ from his 2008 W-2 wages of \$24,466.21.¹² The Claimant did not provide the requested W-2 statement for 2010 from Hampton Automotive Group, thus it is impossible for the NPFC to know if the Claimant's alleged loss of \$15,000.00 is reasonable.¹³ Accordingly, the Claimant has not established his sum certain as 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 from the Claimant's employer evidencing a business decline in revenues as a result of the oil spill which was not responded to by the Claimant or the employer.¹⁴ The Claimant originally submitted a letter from the General Sales Manager from Hampton Nissan which stated "as a result of the negative economic impact this region suffered as a result of the oil-spill catastrophe we were forced to dissolve his part time position on June the 12th 2010."¹⁵ However, while the Claimant's employer appears to agree with the Claimant's contention that the oil spill caused a reduction in sales and thus caused the Claimant's termination, Hampton Automotive Group has not provided any specific information which would support the Claimant's contention. The 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 his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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  *lication Division*

Date of Supervisor's Review: *10/14/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁹ The letter was delivered to Claimant's address on record on 16 September 2011.

¹⁰ 2009 W-2 from Hampton Automotive Group.

¹¹ \$14,411.88 divided by \$24,466.21 equals .58905 minus 1 equals negative .4109 or negative 41%.

¹² 2008 W-2 from Hampton Automotive Group

¹³ NPFC request for additional information question three.

¹⁴ NPFC request for additional information question one.

¹⁵ Employment letter from Hampton Nissan undated.