U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4599

5890/DWHZ
Claim # N10036-1360
14 September 2011

Christian Gardner
[redacted]

Dear Mr. Gardner:

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 N10036-1360 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 N10036-1360.

Mail reconsideration requests to:

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

[redacted]n Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1360
Claimant	Christian Gardner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$350,000.00

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 01 September 2011, Christian Gardner (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $350,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant works at the Island Way Grill in Clearwater, Florida. The Claimant stated that he lost earnings due to the Deepwater Horizon oil spill. He stated that "not only the oil, but the perception of the oil on the beaches has ruined the hospitality industry."[1] In addition, the claim included the present value of his claim, moving expenses, costs to attend college to learn a new trade, a loss of residence value, increased debt to go to college and opportunity costs. The Claimant stated that these losses were "gathered from a 75 year period of averages and the damages caused by the Exxon Valdez."[2]

GCCF paid the Claimant an Emergency Advance Payment of $14,300.00.[3] GCCF's most recent Re-Review Determination Letter on a Final Payment Claim shows a Final Payment of $3,943.70 and a Final Payment Offer of $5,000.00.[4]

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

[1] OSLTF Claim Form dated 03 August 2011 and signed by Claimant
[2] 5-Page letter from Claimant explaining the claim, unsigned and undated
[3] GCCF Re-Review Determination Letter on Final Payment Claim dated 25 July 2011 Part C
[4] GCCF Re-Review Determination Letter on Final Payment Claim dated 25 July 2011 Part C

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.

(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:

- OSLTF Claim Form dated 03 August 2011 and signed by Claimant
- 5-Page letter from Claimant explaining the claim, unsigned and undated
- Handwritten letter from Claimant explaining the claim, unsigned and undated
- Form 1040 US Individual Income Tax Return for 2008, 2009 and 2010
- Handwritten Bi-Weekly averages from 2008 through May 2011
- Claimant's Pay Stubs from Island Way Grill, Inc 13 April 2011 to 03 August 2011
- Island Way Grill Payroll Register for 2008, 2009 and 2010
- GCCF Re-Review Determination Letter on Final Payment Claim dated 18 July 2011. Includes Final Offer of $5,149.26.

Claimant seeks lost earnings and wages in the amount of $350,000.00.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The claim was assigned Claimant ID #3026210 and claim #81125. The EAP claim was paid $14,300.00.[5] Additionally, Claimant filed Interim Payment Claims (IC) with the GCCF. The claim was assigned claims #9287890, 9385492 and 9413267. On 25 July 2011, the Claimant was offered a Modified Final Payment Amount of $3,943.70 and a Final Payment Offer of $5,000.00.[6]

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., 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 N10036-1360 considers and addresses the loss of earnings in all claims presented to the Responsible Party, specifically: GCCF Claim #81125 EAP and Claims #9287890 IC Q1-2011, #9385492 IC Q2-2011 and #9413267 IC Q3-2011.

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 claim includes the present value of his claim, moving expenses, costs to attend college to learn a new trade, a loss of residence value, increased debt to go to college and opportunity costs.

[5] GCCF Re-Review Determination Letter on Final Payment Claim dated 25 July 2011 Part C
[6] GCCF Re-Review Determination Letter on Final Payment Claim dated 25 July 2011 Part C

The GCCF paid the Claimant an Emergency Advance Payment of $14,300.00[7] and the Claimant earned wages of $26,471.00 for 2010[8] bringing his total income for 2010 to $40,771.00.[9] The Claimant's total income for 2010 is more than his wages for 2008 which were $28,557.00 and for 2009 which were $28,931.00.[10] Based on the foregoing information, the NPFC has determined that the Claimant has been fully compensated for the alleged loss of earnings for 2010.

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:	[redacted]***tion Division***
Date of Supervisor's Review:	***14 September 2011***
Supervisor's Action:	***Denial approved***
Supervisor's Comments:	

[7] GCCF Re-Review Determination Letter on Final Payment Claim dated 25 July 2011 Part C
[8] Form 1040 US Individual Income Tax Return for 2010
[9] $14,300.00 plus $26,471.00 equals $40,771.00
[10] Form 1040 US Individual Income Tax Return for 2008 and 2009