

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
10/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6098

Broderick Heims


RE: Claim Number: N10036-1374

Dear Mr. Heims:

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 N10036-1374 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	: N10036-1374
Claimant	: Broderick Heims
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$25,000.00

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 06 September 2011, Broderick Heims (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$25,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant began work as an offshore rig worker for Allison Offshore in Morgan City, Louisiana on 3 May 2010.¹ The Claimant asserted that the Deepwater Horizon oil spill and resulting moratorium caused oilfield work to slow down.² As a result of this reduced workload, the Claimant asserted he experienced a reduction in earnings.³

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF.⁴ The Claimant was assigned Claimant ID # 3473800. The EAP Claim was denied on 17 December 2010.⁵ Additionally, the Claimant filed a Full Review Final (FRFa) claim with the GCCF.⁶ The Claimant was assigned Claim # 9073973. The FRFa claim was denied on 06 May 2011.⁷ The Claimant also filed a second Full Review Final (FRFb) Claim with the GCCF.⁸ The Claimant was assigned Claim # 9136351. The FRFb Claim was denied by the GCCF.⁹ The NPFC has been unable to determine the amount of the claims presented to the GCCF as of the date of this determination.

¹ PHONECON between the NPFC and Allison Offshore Services on 13 September 2011.

² Optional OSLTF Claim Form, dated 06 September 2011.

³ Optional OSLTF Claim Form, dated 06 September 2011.

⁴ GCCF Denial Letter, dated 17 December 2010.

⁵ GCCF Denial Letter, dated 17 December 2010.

⁶ GCCF Claimant Status Page.

⁷ GCCF Denial Letter on Interim Payment/Final Payment claim, dated 06 May 2011.

⁸ GCCF Claimant Status Page.

⁹ GCCF Claimant Status Page.

REQUEST FOR RECONSIDERATION:

On October 10, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on September 21, 2011 because the Claimant failed to prove he suffered a loss due to the Deepwater Horizon oil spill. The Claimant asserted that, due to the Deepwater Horizon oil spill, the available oilfield work decreased thereby reducing the Claimant's working hours and earnings. The NPFC contacted the Claimant's employer from 2010, Allison Offshore Services, to verify the Claimant's assertions.¹⁰ The NPFC was informed that Allison Offshore was not affected by either the Deepwater Horizon oil spill or the drilling moratorium in the Gulf of Mexico because the company is concentrated in services rather than drilling.¹¹ Indeed, Allison Offshore stated that, "the work needs to get done regardless of what was going on" in 2010.¹² Additionally, Allison Offshore stated that the Claimant's working hours in 2010 were normal and consistent for an offshoreman regardless of the Deepwater Horizon oil spill.¹³

Furthermore, the NPFC contacted the Terrebonne Parish Sheriff's Office to confirm the Claimant's dates of incarceration in 2009. The Terrebonne Parish Sheriff's Office confirmed the incarceration dates in 2009 that were submitted to the NPFC.¹⁴ However, the NPFC was informed that the Claimant was also incarcerated in 2010, from 01 June 2010-25 September 2010.¹⁵ Therefore, even though the Claimant did not start work at Allison Offshore until 3 May 2010 and then was incarcerated for almost four of those months, Claimant still made more in 2010 (\$16,828.00¹⁶) than he did in 2009 (\$16,654.12¹⁷). Accordingly, the Claimant failed to prove that he suffered any type of loss caused by the Deepwater Horizon oil spill.

This claim was denied because the Claimant failed to meet his 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.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on October 10, 2011. The Claimant provided a one page letter along with a summary page of dates worked in 2010, a summary page of dates not worked in 2010, a copy of 9 pages of bank statements demonstrating direct deposit to the Claimant from Allison Offshore between the dates of May 2010 and November 2010, a copy of a pay stub from Allison Offshore for the pay period of 9/19/11 – 9/25/11 demonstrating a normal pay period unaffected by the oil spill, and a letter from the Terrebonne Parish Sheriff's Office dated September 28, 2011 correcting his dates of incarceration in 2010 which was previously misstated to the NPFC.

¹⁰ PHONECON between the NPFC and Allison Offshore Services, LLC dated 13 September 2011.

¹¹ PHONECON between the NPFC and Allison Offshore Services, LLC dated 13 September 2011.

¹² PHONECON between the NPFC and Allison Offshore Services, LLC dated 13 September 2011.

¹³ PHONECON between the NPFC and Allison Offshore Services, LLC dated 13 September 2011.

¹⁴ PHONECON between the NPFC and Terrebonne Parish Sheriff's Office dated 14 September 2011.

¹⁵ PHONECON between the NPFC and Terrebonne Parish Sheriff's Office dated 14 September 2011.

¹⁶ 2010 W-2 Wage and Tax Statement from Allison Offshore Services LLC.

¹⁷ 2009 W-2 Wage and Tax Statement from Chet Morrison Services.

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.

The NPFC performed a complete review of the documentation presented by the Claimant.

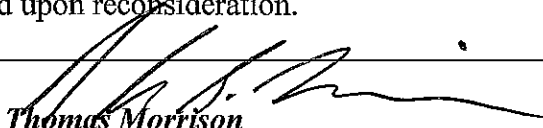
The Claimant requested reconsideration and stated that the person at Allison Offshore the NPFC spoke to was the incorrect person and that the NPFC needed to speak with James Buford. Also, the Claimant stated that the dates of incarceration stated in the NPFC's initial determination were wrong and he provided an updated letter from the Sheriff's Department correcting the dates of incarceration.

In considering the Claimant's request for reconsideration letter and explanation of facts, the NPFC was able to confirm that the Claimant was in fact incarcerated for only two days in 2010 as opposed to June 2010 through September 2010. Additionally, the NPFC contacted Allison Offshore again based on the information presented to the NPFC about speaking with the wrong person. The NPFC spoke with Mr. Todd Hatch, the contact person for the Human Resource Department at Allison Offshore. Mr. Hatch confirmed that Mr. James Buford works in the Offshore Division and his position is to call employees out on specific projects but that he is NOT the proper person to speak with when pertaining to personnel and business issues that Mr. Hatch is in fact the proper person.

Mr. Hatch reaffirmed to the NPFC that Allison Offshore was not affected by the Deepwater Horizon oil spill despite anything the Claimant may contend and that they stand behind the original information provided to the NPFC. In closing, the Claimant has never explained how he arrived at his alleged loss of \$25,000.00.

Based on the foregoing, the NPFC has determined that the Claimant has again failed to demonstrate (1) that he suffered a loss in the amount claimed or how he arrived at the loss figure, and (2) that his 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:  Thomas Morrison

Date of Supervisor's review: 10/18/11

Supervisor Action: **Denial on reconsideration approved**