

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6036

5890/DWHZ
25 October 2011

Tyra M. Marsh


Re: Claim Number: N10036-1383

Dear Ms. Marsh:

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 your claim number N10036-1383 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. If, however 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 N10036-1383.

Mail reconsideration requests to:

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

Sincerely,


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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1383
Claimant	Tyra M. Marsh
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$14,620.00

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 08 September 2011, Tyra Marsh (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$14,620.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was a customer service and sales representative for an AT&T call center in Gulfport, Mississippi.¹ The Claimant indicated that when AT&T customers called with questions, it was her job to sell these customers new services while they were on the line.² The Claimant stated that she had a sales quota of three to five sales per month and if she did not make a sale for three months she would be laid off.³ The Claimant asserted that, due to the Deepwater Horizon, customers lost earnings and called in to cancel their services and, because of the nature of the phone call, it was difficult for the Claimant to sell these customers new services.⁴ After three consecutive months without a sale, the Claimant asserted she was laid off on 3 September 2010.⁵

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days

¹ PHONECON between the NPFC and the Claimant on 12 September 2011.

² PHONECON between the NPFC and the Claimant on 12 September 2011.

³ PHONECON between the NPFC and the Claimant on 12 September 2011.

⁴ PHONECON between the NPFC and the Claimant on 12 September 2011.

⁵ Email from the Claimant to the NPFC, dated 17 October 2011.

after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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, destruction or loss of real or personal property or of 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.

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 undertaken, 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

The Claimant's Submission to the OSLTF

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 26 August 2011;
- Letter of claim explanation from the Claimant to "Whom it May Concern," undated;
- Document titled "Explanation Of How I Came Up with Claim Amount of Lost Wages";
- Mississippi Department of Employment Security Unemployment Verification, dated 30 September 2010;
- Mississippi Department of Employment Security Unemployment Verification, dated 26 August 2011;
- 2009 Form W-2 from ATT Mobility Services;
- 2010 Form W-2 from AT&T Mobility Services LLC;
- Paystubs from AT&T Mobility Services LLC for the periods: 16 May 2010 through 29 May 2010 and 13 June 2010 through 21 August 2010;

- Email from the Claimant to the NPFC, dated 17 October 2011;
- 2008 Form 1040A Federal Income Tax Return;
- 2009 Form 1040A Federal Income Tax Return; and
- 2010 Form 1040 Federal Income Tax Return.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advanced Payment (EAP) claim with the GCCF for loss of profits on 5 October 2010 in the amount of \$5,000.00.⁶ The Claimant was assigned Claimant ID # 3098566 and Claim # 153090. The GCCF denied the EAP claim on 29 October 2010.⁷ The Claimant also filed a Full Review Final (FRF) claim with the GCCF for loss of profits on 16 November 2010 in the amount of \$8,030.80.⁸ The Claimant was assigned Claim # 9035543. The FRF claim was denied by the GCCF on 16 April 2011.⁹

Based upon the evidence provided by the Claimant, it appears that the subject matter of the Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that she was laid off from AT&T because of reduced sales caused by the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC up to \$8,030.80. Accordingly, this Claim Summary Determination for NPFC claim N10036-1383 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 153090 (EAP) and 9035543 (FRF).

NPFC Determination

The claim is denied. 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 documentation presented by the Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an EAP claim to the GCCF in the amount of \$5,000.00 and a FRF claim in the amount of \$8,030.80. The Claimant then presented a loss of profits and impairment of earnings capacity claim for \$14,620.00 to the NPFC. Any claimed amount of damages exceeding \$8,030.80 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that she was fired from her job as a sales representative due to a reduction in sales caused by the Deepwater Horizon oil spill. However, the Claimant did not provide any evidence to the NPFC supporting her alleged loss. The Claimant's initial submission to the NPFC included several paystubs and Form W-2's from AT&T, and unemployment benefits documentation. On 29 September 2011, the NPFC requested that the Claimant provide additional information to document her loss and provide evidence linking her alleged loss to the Deepwater Horizon oil spill. The requested documentation included: tax returns from 2008 through 2010, paystubs from 2008 through 2010, letter from AT&T supporting her loss¹⁰, and records of her sales at AT&T.

On 17 October 2011, the Claimant responded to the NPFC's request for additional information. The Claimant did provide her tax returns from 2008 through 2010. However, the Claimant failed to provide

⁶ Report from the GCCF, dated 6 October 2010.

⁷ Denial letter from the GCCF, dated 29 October 2010.

⁸ Report from the GCCF, dated 6 October 2010.

⁹ Denial letter on Interim Payment/Final Payment Claim, dated 16 April 2011.

¹⁰ The NPFC also requested that the Claimant provide a letter from her employer supporting her loss during a phone conversation on 12 September 2011.

her sales records or paystubs, indicating that she was unable to do so because she was no longer employed by AT&T and didn't have access to the electronic database that stored these records.¹¹ Additionally, she was also unable to provide a letter from her employer supporting the loss, indicating that when she called she was only able to speak with customer service representatives regarding her benefits.¹²

Without any evidence of her sales records or confirmation from her employer, the NPFC is unable to conclude that the Deepwater Horizon oil spill was the cause of any loss by the Claimant; especially considering that the Claimant worked in a call center that serviced a sales area that included the entire Southeast Region of the United States (including Virginia, West Virginia, Kentucky, South Carolina, North Carolina, Georgia, Tennessee, and Arkansas).¹³ Accordingly, the Claimant did not meet the evidentiary burden imposed by 33 C.F.R. § 136.105(a) and 136.105(e)(6) and provide any evidence to indicate her alleged loss was due to the Deepwater Horizon oil spill as opposed to other market factors depressing the national economy.

This claim is denied because the Claimant has failed to (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) demonstrate that there was an alleged loss in the amount claimed, and (3) demonstrate 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, this claim is denied.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/25/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹¹ Email from the Claimant to the NPFC, dated 17 October 2011.

¹² Email from the Claimant to the NPFC, dated 17 October 2011.

¹³ Email from the Claimant to the NPFC, dated 17 October 2011.