

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 1570 0001 4802 6715

5890/DWHZ
25 October 2011

Jose Hipolito Morales Garcia


RE: Claim Number: N10036-1392

Dear Mr. Garcia:

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 N10036-1392 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 N10036-1392.

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1392
Claimant	Jose Hipolito Morales Garcia
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

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 12 September 2011, Jose Hipolito Morales Garcia (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 to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant works for Crystal Seas Seafood in Pass Christian, Mississippi, on a H1B visa as an oyster shucker.¹ The Claimant started working for Crystal Seas Seafood in 2006. He worked through 2009, did not work in 2010, and restarted work with Crystal Seas Seafood in 2011.² The Claimant alleged lost work due to the Deepwater Horizon oil spill.³

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 Crystal Seas Seafood employment Letter dated 29 March 2011.

² Telephone conversation between NPFC staff and Employer 18 October 2011.

³ Claimant's letter explaining claim dated 29 June 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 05 September 2011;
- 2) The Claimant's letter explaining claim dated 29 June 2011;
- 3) 2008 Form 1040A U.S. Individual Income Tax Return;
- 4) Crystal Seas Seafood employment letter dated 29 March 2011;
- 5) Copy of Social Security card, requires INS authorization for employment;
- 6) 2009 W-2 from Crystal Seas Seafood;
- 7) Wage information from Crystal Seas Seafood for January through March 2011, January through December 2009, and January through December 2008.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$10,000.00.

On 19 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 26 September 2011.⁴

Prior to presenting his claim to the NPFC, Claimant filed a Full Review Final (FRF) claim with the GCCF on 04 April 2011 in the amount of \$15,840.00.⁵ He was assigned Claimant ID #1620409 and claim #9345058. This claim was denied on 29 April 2011.⁶ Based upon the evidence provided by the Claimant, it appears that the subject matter of the FRF GCCF claim is 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 the Claimant's denied FRF GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1392 considers and addresses the earnings claimed in the FRF claim #9345058 presented to the responsible party.

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.⁷ The letter requested, among other things, the Claimant's tax returns from 2008 through 2010, a statement of whether he was fired or why he could not work in 2010 due to the oil spill and a calculation of his alleged loss.⁸ To date, the Claimant has not responded to the request.⁹ The NPFC therefore proceeded to evaluate the claim with the documentation the Claimant originally submitted.

The Claimant alleged a loss of \$10,000.00 for his work with Crystal Seas Seafood for the year of 2010 because of a reduction in force due to the oil spill.¹⁰ The Claimant provided his 2009 W-2 in the amount of \$6,358.81¹¹ which does not evidence a loss of \$10,000.00. To verify his alleged damages, the NPFC sent a certified letter requesting his tax returns for 2008 through 2010 and his W-2 for 2008, as of the date of this letter the Claimant has not provided the requested documentation.¹² Accordingly, the Claimant has not established his sum certain as presented to the NPFC by a preponderance of the evidence.

With respect to the alleged causation of the Claimant's impairment of earnings capacity, the NPFC staff contacted Crystal Seas Seafood on 19 October 2011 via telephone.¹³ Crystal Seas Seafood representatives stated that the Claimant was allowed to work in 2010 but chose not to on his own volition and his employment with the company was not impacted by the Deepwater Horizon oil spill.¹⁴ The Claimant is currently working for Crystal Seas Seafood.¹⁵ Furthermore,

⁴ USPS tracking # 7011 1150 0000 4636 2007.

⁵ Report from the GCCF dated 06 October 2011.

⁶ GCCF Denial Letter dated 29 April 2011.

⁷ The letter was sent on 19 September 2011.

⁸ USPS tracking # 7011 1150 0000 4636 2007.

⁹ The letter was delivered to Claimant's address on record on 26 September 2011.

¹⁰ The Claimant's letter explaining claim dated 29 June 2011.

¹¹ 2009 W-2 from Crystal Seas Seafood.

¹² USPS tracking # 7011 1150 0000 4636 2007.

¹³ Telephone conversation between NPFC staff and Crystal Seas Seafood 19 October 2011.

¹⁴ Telephone conversation between NPFC staff and Crystal Seas Seafood 19 October 2011.

the Claimant was requested by the NPFC to provide written statements as to the causation of his alleged loss. However as of the date of this letter, the Claimant has not responded to NPFC's certified letter.¹⁵ 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 Claims Adjudication Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁵ Crystal Seas Seafood employment Letter dated 29 March 2011.

¹⁶ USPS tracking # 7011 1150 0000 4636 2007.