

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1400
Claimant	: Aida Peel
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$23,234.00

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 12 September 2011, Aida Y. Peel (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) asserting \$59,234.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill. On 13 September 2011, the Claimant amended her sum certain to \$23,234.00 in loss of profits and impairment of earnings capacity.¹

The Claimant was periodically employed by Lilly's Cleaning Service² as a housekeeper for condominiums and hotels in the Panama City, Florida region.³ The Claimant asserted that, due to the Deepwater Horizon, there was a decrease in tourism in Panama City, which resulted in the Claimant not being rehired by Lilly's Cleaning Service.⁴

The Claimant provided the following explanation for the calculation of her sum certain of \$23,234.00: the Claimant took the monthly loss of income from May 2010-October 2011 (\$36,000.00) and added her incurred late fees and loans from her bank as well as loans she obtained from her friends (\$3,320.00) and then added the value she asserts she lost from items sold (\$4,850.00) for a total amount of \$44,170.00.⁵ The Claimant then added up her received benefits from BP (\$2,928.00), GCCF (\$9,000.00) and unemployment benefits (\$9,008.00) for a

¹ Letter from the Claimant to the NPFC requesting a change of her sum certain to \$23,234.00, dated 13 September 2011.

² Included in the Claimant's submission to the NPFC is discussion of the Claimant's previous employment with Sam's Club. In a subsequent phone conversation with the NPFC on 06 October 2011, the Claimant stated that although she noted her previous employment with Sam's Club in her submission, she is only claiming a loss from being laid-off from Lilly's Cleaning Services. Accordingly, the NPFC's determination will only address the claimed losses from Lilly's Cleaning Services.

³ Letter from the Claimant to the NPFC responding to the NPFC's Request for Additional Information, dated 06 October 2011; PHONECON between the NPFC and the Claimant on 06 October 2011.

⁴ Letter from the Claimant to the NPFC dated 12 September 2011.

⁵ Letter from the Claimant describing the calculation of her damages dated 06 October 2011.

total of \$20,936.00.⁶ The Claimant then subtracted her total benefits from her claimed total for a difference of \$23,234.00.⁷

Prior to the creation of the GCCF, the Claimant filed a claim with BP on 16 June 2010.⁸ The Claimant received payment in the amount of \$2,928.00.⁹ Later, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF for loss of profits and impairment of earnings capacity on 23 August 2010 in the amount of \$110,400.00.¹⁰ The Claimant was assigned Claimant ID # 1078114 and Claim # 8645. The Claimant received payment in the amount of \$9,000.00 on 18 September 2010 for the EAP claim.¹¹ Additionally, the Claimant filed a Full Review Final (FRF1) Claim with the GCCF for loss of profits and impairment of earnings capacity on 23 August 2010 in the amount of \$110,400.00.¹² The Claimant was assigned Claim # 9242104. The FRF1 claim was denied.¹³

Additionally, the Claimant filed a Full Review Final (FRF2) Claim with the GCCF for loss of profits and impairment of earnings capacity on 01 March 2011 in the amount of \$110,400.00.¹⁴ The Claimant was assigned Claim # 9178401. The FRF2 claim was denied.¹⁵ The Claimant then filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF for loss of profits and impairment of earnings capacity on 15 March 2011 in the amount of \$110,400.00.¹⁶ The Claimant was assigned Claim # 9324007. The ICQ12011 was denied on 07 September 2011.¹⁷

The Claimant filed an Interim Payment Claim Quarter II 2011 (ICQ22011a) with the GCCF for loss of profits and impairment of earnings capacity on 03 May 2011 in the amount of \$110,400.00.¹⁸ The Claimant was assigned Claim # 9374908. The ICQII2011a was denied.¹⁹ The Claimant filed an Interim Payment Claim Quarter II 2011 (ICQ2011b) with the GCCF for real or personal property damage on 03 May 2011 in the amount of \$4,650.00.²⁰ The Claimant was assigned Claim # 9374908. The ICQ22011b was denied.²¹

Lastly, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF for loss of profits and impairment of earnings capacity on 05 July 2011 in the amount \$19,400.00.²² The Claimant was assigned Claim # 9410151. The ICQ32011 was denied on 07 September 2011.²³

⁶ Letter from the Claimant describing the calculation of her damages dated 06 October 2011.

⁷ Letter from the Claimant describing the calculation of her damages dated 06 October 2011.

⁸ Report from the GCCF dated 06 October 2011.

⁹ Report from the GCCF dated 06 October 2011.

¹⁰ Report from the GCCF dated 06 October 2011.

¹¹ GCCF Notice of Determination, Emergency Advance Payment dated 18 September 2010.

¹² Report from the GCCF dated 06 October 2011.

¹³ Report from the GCCF dated 06 October 2011.

¹⁴ Report from the GCCF dated 06 October 2011.

¹⁵ Report from the GCCF dated 06 October 2011.

¹⁶ Report from the GCCF dated 06 October 2011.

¹⁷ GCCF Denial Letter dated 07 September 2011 (1).

¹⁸ Report from the GCCF dated 06 October 2011.

¹⁹ Report from the GCCF dated 06 October 2011.

²⁰ Report from the GCCF dated 06 October 2011.

²¹ Report from the GCCF dated 06 October 2011.

²² Report from the GCCF dated 06 October 2011.

²³ GCCF Denial Letter dated 07 September 2011 (2).

REQUEST FOR RECONSIDERATION:

On November 2, 2011, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim.

The NPFC denied the claim originally on October 24, 2011 because the Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that she experienced a loss of income because she was not rehired by Lilly's Cleaning Service in 2010 or 2011 due to the Deepwater Horizon oil spill.²⁴ However, the Claimant's initial claim submission to the NPFC lacked any documentation of her earnings from Lilly's Cleaning Service. The Claimant's tax returns did not indicate that the Claimant experienced a loss of earnings in 2010. The Claimant's tax returns indicated total earnings of \$2,619.00 in 2008²⁵ and \$11,711.00 in 2009²⁶, while the Claimant reported earnings of \$21,559.00 in 2010²⁷.

The Claimant did provide two letters from Lilly's Cleaning Service in her initial submission indicating that the Claimant worked there previously at \$250.00 per week for units cleaned²⁸ and that she was unable to be rehired due to the Deepwater Horizon oil spill²⁹. The NPFC contacted Lilly's Cleaning Service to confirm the authenticity of the letters provided and to gather additional information regarding the Claimant's employment. Lilly's confirmed writing the letters provided by the Claimant, as well as confirming that her company experienced cancellations from hotels and condos in Panama City, which affected her ability to rehire the Claimant in 2010.³⁰ Lilly's stated that, if the NPFC desired more specific information regarding the Claimant's employment, the NPFC could request such information via email.³¹

On 19 September 2011, the NPFC emailed Lilly's Cleaning Service and requested additional information. The NPFC requested information such as, the dates of the Claimant's employment at Lilly's, payroll information for the Claimant, and specific information regarding the exact financial loss suffered by Lilly's Cleaning Service due to the Deepwater Horizon oil spill, and the status of any claims filed by Lilly's Cleaning Service with the GCCF.³²

On 27 September 2011, Lilly's Cleaning Service responded to the NPFC's request and reaffirmed the Claimant's prior employment at Lilly's and stated that the Claimant's work in 2010 was affected by condo cancellations due to the Deepwater Horizon oil spill.³³ However, Lilly's has failed to address the questions from the NPFC regarding the exact financial loss suffered by Lilly's and the status of any claims Lilly's had or has with the GCCF.³⁴

With respect to the Claimant's employment dates and payroll records, Lilly's informed the NPFC that the Claimant's "services were paid in cash (no more than \$250.00 per week) and she is responsible for her own records and report of such Earnings."³⁵

²⁴ Letter from the Claimant to the NPFC, dated 12 September 2011.

²⁵ 2008 Form 1040A Federal Tax Return.

²⁶ 2009 Form 1040A Federal Tax Return.

²⁷ 2010 Form 1040 Federal Tax Return.

²⁸ Letter from Lilly Canales to BP Claims, dated 07 July 2010.

²⁹ Letter from Lilly Canales to BP Claims, dated 01 July 2010.

³⁰ PHONECON between Lilly's Cleaning Service and the NPFC on 19 September 2011.

³¹ PHONECON between Lilly's Cleaning Service and the NPFC on 19 September 2011.

³² Email requesting additional information from the NPFC to Lilly's Cleaning Service, dated 19 September 2011.

³³ Letter from Lilly's Cleaning Service to the NPFC, dated 27 September 2011.

³⁴ Letter from Lilly's Cleaning Service to the NPFC, dated 27 September 2011.

³⁵ Letter from Lilly's Cleaning Service to the NPFC, dated 27 September 2011.

After receiving the above response from Lilly's Cleaning Service, the NPFC sent a letter to the Claimant requesting additional information to verify her employment history and past earnings, as well as to determine the effect the Deepwater Horizon oil spill had on the Claimant's earnings.³⁶ The NPFC requested documentation including: Form W-2's and Form 1099's for all employment from 2008-2010, all pay stubs or receipts received from work performed for Lilly's Cleaning Service from 2008-2010, a record of unemployment benefits received from 2010 through the present, bank statements from 2008-2010, and the NPFC also requested that the Claimant respond to several questions regarding her employment history.³⁷

The Claimant responded to the NPFC's request for additional information on 6 October 2011. The Claimant failed to provide any tax information, receipts of payment, or any other financial documentation from her employment at Lilly's Cleaning Service.³⁸ The Claimant did provide some bank statements from 2008-2010 which had cash deposits recorded. However, the bank statements were substantially incomplete and, for the bank statements provided, there was no consistent pattern of dates or amounts of deposits.³⁹ Further, these amounts were nowhere near the \$250.00 per week asserted by the Claimant.⁴⁰ Regarding the NPFC's question concerning the dates of her employment at Lilly's, the Claimant responded that "I Have worked on an off for Lilly's since approximate [sic] 2000 but most from 2008 till 2010."⁴¹

Accordingly, the Claimant has not provided any documentation verifying the dates of her prior employment at Lilly's Cleaning Service, the amounts previously earned at Lilly's, or any documentation providing insight into when the Claimant might have worked at Lilly's in 2010 and 2011. Even though the Claimant has provided letters from Lilly's Cleaning Service indicating she experienced reduced hours due to the Deepwater Horizon oil spill, the NPFC does not have any documentation by which to calculate a financial loss for the Claimant, much less a loss in an amount greater than the \$11,928.00 already received by the Claimant from BP and the GCCF.⁴² The Claimant has no W-2s for Lilly's or a Form 1099; therefore it would also appear that the Claimant has not reported the alleged cash wages received from Lilly's to the IRS as required by law. Without this documentation it is not possible to determine how much the Claimant may have made from Lilly's during the time period of this claim submission.

This claim was denied because the Claimant failed to meet her burden to demonstrate that she suffered a loss in the amount claimed and she failed to demonstrate that any 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.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on November 2, 2011. The Claimant provided a one page letter requesting reconsideration, a partial copy of her GCCF claim submission for Section II. Claimant Information which has her employer's identification

³⁶ Letter from the NPFC to the Claimant requesting additional information, dated 05 October 2011.

³⁷ Letter from the NPFC to the Claimant requesting additional information, dated 05 October 2011.

³⁸ Fax from the Claimant to the NPFC, dated 6 October 2011.

³⁹ Fax from the Claimant to the NPFC, dated 6 October 2011.

⁴⁰ Claimant asserted she earned a minimum of \$250.00 per week; however the Claimant's employer, in letter dated 27 September 2011, indicated that the Claimant earned no more than \$250.00 per week.

⁴¹ Fax from the Claimant to the NPFC, dated 6 October 2011.

⁴² The NPFC also notes that the Claimant has received unemployment benefits continuously since January of 2010. Although the Claimant alleges her unemployment benefits ended in March of 2011, the provided documentation indicates the Claimant continued to receive extended unemployment benefits in May of 2011 and would continue to receive those benefits through January of 2012.

number circled and the employer's GCCF claimant ID #, a copy of the Claimant's past due Verizon wireless bill dated October 25, 2011; a copy of her past due Comcast bill dated October 21, 2011, and a copy of her past due electric bill dated October 4, 2011.

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 Claimant bases her alleged loss of profits on the (1) loss of her job at Sam's and the (2) failure of Lilly's to continue to employ her services to clean condos and hotels and she states that these losses are due to the oil spill. However, she stated in her reconsideration that she had been let go by Sam's (Walmart) prior to the oil spill. The Claimant stated that they were going to hire her back in the future but due to loss in sales, that did not happen. Thus, she cannot successfully argue that her loss of a job at Sam's was due to the oil spill.

The Claimant also states that due to the oil spill she could not continue to work for Lilly's. The Claimant provided the GCCF Claimant ID # for Lilly's Cleaning Service so that the NPFC could confirm losses claimed and paid by the GCCF. The NPFC confirmed that Lilly's Cleaning Service did present a claim to the GCCF and received approximately \$44,900.00 which was paid on or about November 22, 2010. Lilly's Cleaning Service was also offered a \$25,000.00 final payment which was accepted on or about June 9, 2011.

While the Claimant was able to provide additional information that indicated the Claimant's previous employer was paid by the GCCF for losses associated with the Deepwater Horizon oil spill incident, the Claimant has yet to produce evidence of the exact amount of income she had historically earned from Lilly's. She did not produce IRS records, W-2s or 1099s from Lilly's; therefore, she cannot corroborate her income or loss of income from that employer. Neither do her bank statements support regular deposits for wages earned from Lilly's. As such, the NPFC is unable to determine the exact dates and payments made to the Claimant from Lilly's; therefore, the NPFC is unable to determine what losses, if any, were ever experienced.

Furthermore, as originally stated in the NPFC's initial denial determination, the Claimant made more in 2010 than she had made in the two years preceding the oil spill; therefore, her tax returns do not support a loss in the amount claimed. It is also important to note that the Claimant was paid a total of \$11,928.00 by the RP/GCCF for alleged losses resulting from a lack of work at Lilly's. Also, it appears the Claimant has been fully compensated from the RP/GCCF for any such loss claimed.

Based on the foregoing, the NPFC has determined that the Claimant has again failed to demonstrate (1) that she suffered a loss in the amount claimed over and above the \$11,928.00

paid by the RP/GCCF, and (2) that she suffered any loss due to the oil spill since her records reflect that she made more in 2010 than the previous two years.

This claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *11/8/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
11/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6203

Aida Peel
[REDACTED]

RE: Claim Number: N10036-1400

Dear Ms. Peel:

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 N10036-1400 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