

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2755

5890/DWHZ
07 October 2011

Lawrence Terrel
[REDACTED]

Re: Claim Number: N10036-1421

Dear Mr. Terrel:

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 N10036-1421 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 N10036-1421.

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	N10036-1421
Claimant	Lawrence Terrel
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,800.00

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 19 September 2011, Lawrence Terrel (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$8,800.00 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 employed by the Association for Retarded Citizens (ARC) of Greater New Orleans.¹ ARC of Greater New Orleans provides care to mentally disabled citizens in the New Orleans region.² The Claimant asserted that due to the oil spill his full-time work status was reduced to part-time and that he was eventually laid off by ARC of Greater New Orleans.³

The Claimant did not provide an explanation regarding his sum certain of \$8,800.00.

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 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).

¹ PHONECON between the NPFC and the Claimant on 22 September 2011.

² <http://www.arcgno.org/about.php> (last accessed 22 September 2011).

³ PHONECON between the NPFC and the Claimant on 22 September 2011.

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 the claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form received 19 September 2011;
- GCCF Denial Letter dated 18 August 2011;
- 2009 W-2 Wage and Tax Statement from Association for Retarded Citizens;
- 2009 W-2 Wage and Tax Statement from Harrah's Operating Company Inc.;
- 2009 1099-G Federal Tax Document from Georgia Department of Labor;
- Louisiana Workforce Commission UT Benefit Operations Monetary Determination dated 20 August 2010;
- 2009 Form 1040 Federal Tax Return;
- 2008 Form 1040 Federal Tax Return;⁴
- 2010 Form 1040A Federal Tax Return;
- 2009 W-2 Wage and Tax Statement from Association for Retarded Citizens;
- 2008 W-2 Wage and Tax Statement from JROD Incorporated;

⁴ Filed jointly between the Claimant and Loren V. Falls.

- 2008 W-2 Wage and Tax Statement from Harrah's Operating Co. Inc.;
- 2008 1099-G Federal Tax Document from Georgia Department of Labor;
- Wachovia bank statements for period: 11 April 2010-11 April 2011; and
- Pay stub from ARC of Greater New Orleans dated 15 June 2009.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF.⁵ The Claimant was assigned Claimant ID # 3473800 and Claim # 197058. The EAP Claim was denied on 02 November 2010.⁶ Additionally, the Claimant filed an Interim Payment 1 (ICQ12011) claim with the GCCF.⁷ The Claimant was assigned Claim # 9267842. The ICQ12011 Claim was denied on 16 April 2011.⁸ Additionally, the Claimant filed an Interim 3 (ICQ32011) claim with the GCCF.⁹ The Claimant was assigned Claim # 9435088. The ICQ32011 was denied on 18 August 2011.¹⁰ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF.¹¹ The Claimant was assigned Claim ID # 9268496. The FRF was denied.¹²

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that the Claimant experienced reduced wages and eventually was laid off at ARC of Greater New Orleans due to the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and, to the extent the damages claimed to the NPFC were presented to the RP, properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1421 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 197058 (EAP), 9267842 (ICQ12011), 9435088 (ICQ32011) and 9268496 (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.

This claim is denied because the Claimant failed to prove he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that his employment at ARC of Greater New Orleans was reduced from full-time to part-time status and eventually eliminated completely due to the Deepwater Horizon oil spill.¹³ The NPFC contacted the Claimant to gain additional information regarding the Claimant's assertions and obtain clarification regarding how exactly the Claimant's employment at ARC of Greater New Orleans was affected by the Deepwater Horizon oil spill. When asked directly how the oil spill affected his employment, the Claimant was unable to articulate any specific reason why or how the oil spill affected his employment, other than that "the oil spill affected everything."¹⁴

Additionally, the Claimant gave the NPFC contact information for ARC of Greater New Orleans so that the NPFC could further verify the Claimant's loss.¹⁵ When the NPFC contacted ARC of Greater New Orleans, the NPFC was informed that ARC of Greater New Orleans was not affected in any way by the

⁵ GCCF Claimant Status Page.

⁶ GCCF Denial Letter dated 02 November 2010.

⁷ GCCF Claimant Status Page.

⁸ GCCF Denial Letter dated 16 April 2011.

⁹ GCCF Claimant Status Page.

¹⁰ GCCF Denial Letter dated 18 August 2011.

¹¹ GCCF Claimant Status Page.

¹² GCCF Claimant Status Page.

¹³ PHONECON between the NPFC and the Claimant on 22 September 2011.

¹⁴ PHONECON between the NPFC and the Claimant on 22 September 2011.

¹⁵ PHONECON between the NPFC and the Claimant on 22 September 2011.

Deepwater Horizon oil spill.¹⁶ Specific to the Claimant's claim, ARC of Greater New Orleans informed the NPFC that the Claimant, nor anyone at ARC of Greater New Orleans, lost their job due to the oil spill.¹⁷

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

Claimant's request for \$8,800.00 is hereby denied because the allegations presented by the Claimant vice the information gathered by the NPFC as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order to falsely try to obtain funds from the Federal Government and as such, this claim is denied.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/7/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁶ PHONECON between the NPFC and ARC of Greater New Orleans dated 22 September 2011.

¹⁷ PHONECON between the NPFC and ARC of Greater New Orleans dated 22 September 2011.