

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 1570 0001 4802 6883

5890/DWHZ
31 October 2011

Eduardo Balles
[REDACTED]

RE: Claim Number: N10036-1429

Dear Mr. Balles:

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 N10036-1429 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 N10036-1429.

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	N10036-1429
Claimant	Eduardo Balles
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,000.00

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 19 September 2011, Eduardo Balles (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$15,000.00 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 worked for Royal Hospitality Services LLC from November 2009 through 10 May 2010.¹ The Claimant was rehired in December of 2010 by Royal Hospitality Services LLC.² Royal Hospitality Services is a staffing company that provided their client, Beau Rivage Resort and Casino located in Biloxi, Mississippi, with the Claimant's services as a house keeper.³ The Claimant alleged that he lost his job due to a reduction in force (RIF) as a result of the Deepwater Horizon oil spill.⁴

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:

¹ Employment letter from Royal Hospitality Services LLC dated 01 July 2011.

² Employment letter from Royal Hospitality Services LLC dated 01 July 2011.

³ Telephone conversation between NPFC staff and HR of Royal American Hospitality 21 September 2011.

⁴ The Claimant's letter to the NPFC explaining his claim dated 24 August 2011.

- (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 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

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted:

- 1) Sum certain letter dated 19 September 2011;
- 2) GCCF determination letter on Interim payment/Final payment claim dated 30 March 2011;
- 3) The Claimant's letter to the NPFC explaining his claim dated 24 August 2011;
- 4) Employment letter from Royal Hospitality Services LLC dated 01 July 2011;
- 5) 2010 W-2 from Royal Hospitality Services LLC;
- 6) 2009 W-2 from Royal Hospitality Services LLC;
- 7) Payroll summary from Royal Hospitality Services LLC for 12 January 2011 through 10 August 2011;
- 8) Payroll summary from Royal Hospitality Services LLC for 01 January 2010 through 31 December 2010.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$15,000.00.

On 23 September 2011, 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 03 October 2011.⁵

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment claim (EAP) with the GCCF on 14 November 2010 in the amount of \$5,000.00.⁶ He was assigned Claimant ID #3394501 and claim #465414. This claim was denied on 10 December 2010.⁷ Additionally, the Claimant filed two Interim claims with the GCCF, Interim claims (ICQ12011) Claim 1 with GCCF #9126049 and Interim claim 2 (ICQ32011) with Claim #9418347; claim ICQ12011 was filed on 03 January 2011 for \$10,000.00 and claim ICQ32011 was filed on 16 July 2011 for \$15,000.00. Interim Claim ICQ12011 was denied on 29 March 2011 and claim ICQ32011 was denied on 25 July 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that the Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1429 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 465414 (EAP), 9126049 (ICQ12011), and 9418347 (ICQ32011).

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.⁹ The letter requested, among other things, a statement from the Claimant's employer, Beau Rivage Resort and Casino, explaining how the decision to release the Claimant resulted from the Deepwater Horizon oil spill. To date, the Claimant has not responded to the request.¹⁰ The NPFC therefore proceeded to evaluate the claim with the documentation presented by the Claimant.

The Claimant alleged \$15,000.00 in damages as a result of the oil spill.¹¹ The NPFC requested he provide tax returns for 2008 through 2010, his accompanying 1099s and or W-2 forms, and explain whether he mitigated his alleged loss with other employment in 2010.¹² As of the date of this letter, the Claimant has failed to respond to the NPFC certified letter requesting such

⁵ USPS tracking 7011 1150 0000 4636 2564.

⁶ Report from the GCCF dated 06 October 2011.

⁷ GCCF Denial Letter dated 10 December 2010.

⁸ GCCF Denial Letter dated 25 July 2011.

⁹ The letter was sent on 23 September 2011.

¹⁰ The letter was delivered to the Claimant's address on record on 03 October 2011.

¹¹ Sum certain letter dated 19 September 2011.

¹² NPFC certified letter requesting additional information dated 23 September 2011.

additional information.¹³ The Claimant submitted only his W-2 forms for 2009 and 2010 from Royal Hospitality Services LLC.¹⁴ In 2009, the Claimant started working in November and made \$208.00. In 2010, for the months of March through May and December, he made \$4,338.93 which does not support a loss of \$15,000.00.¹⁵ Accordingly, the Claimant has not established his sum certain as presented to the NPFC.

The Claimant alleged he lost his job as a result of the oil spill.¹⁶ NPFC staff contacted Royal Hospitality Services LLC on 21 September 2011.¹⁷ The HR Department confirmed the Claimant's employment and that he was staffed with Beau Rivage Resort and Casino in Biloxi Mississippi as a housekeeper until 15 May 2010 due to reduction in force (RIF).¹⁸ The HR staff could not verify the causation any further.¹⁹ The NPFC requested via certified letter that the Claimant provide a letter from his employer and/or Beau Rivage stating the causation for his loss of employment.²⁰ As of the date of this letter, the Claimant has not provided the requested documentation.²¹ 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: *10/29/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹³ USPS 7011 1150 0000 4636 2564.

¹⁴ 2009 and 2010 W-2 forms from Royal Hospitality Services LLC.

¹⁵ 2009 and 2010 W-2 forms from Royal Hospitality Services LLC.

¹⁶ The Claimant's letter to the NPFC explaining his claim dated 24 August 2011.

¹⁷ Phone conversation between NPFC staff and HR of Royal Hospitality Services LLC on 21 September 2011.

¹⁸ Phone conversation between NPFC staff and HR of Royal Hospitality Services LLC on 21 September 2011.

¹⁹ Phone conversation between NPFC staff and HR of Royal Hospitality Services LLC on 21 September 2011.

²⁰ NPFC certified letter requesting additional information dated 23 September 2011.

²¹ USPS 7011 1150 0000 4636 2564.