

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 1150 0000 4636 2625

5890/DWHZ
Claim # N10036-1430
29 September 2011

Taminisha Howard
[REDACTED]

Dear Ms. Howard:

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 the claim number N10036-1430 involving Deepwater Horizon. Please see the attached 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 N10036-1430.

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	N10036-1430
Claimant	Taminisha Howard
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$4,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 20 September 2011, Taminisha Howard (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$4,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant provided daycare for children in her home in Mobile, Alabama. It was named the Magical Beginnings Daycare. The parents worked in restaurants and hotels along the Gulf coast.¹ The Claimant stated that the parents were affected by the oil spill. The parents lost their jobs and could not afford the daycare tuition.² She stated she closed the daycare and moved to Texas to look for employment.³ The Claim covers half of April 2010, May 2010, and June 2010.⁴ The Claimant originally submitted a claim seeking \$9,600.00 but later changed it to \$4,000.00.⁵

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.

¹ OSLTC Claim Form signed by Claimant 26 August 2011

² Letter from Claimant received 23 September 2011 in response to NPFC's additional information letter

³ Letter from Claimant received 23 September 2011 in response to NPFC's additional information letter

⁴ Letter from Claimant received 23 September 2011 in response to NPFC's additional information letter

⁵ Letter from Claimant received 23 September 2011 in response to NPFC's additional information letter

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.
- (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 this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 26 August 2011

- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 08 June 2011
- Form 1040 US Individual Income Tax Return for 2010 and 2009
- Receipts from parents at Magical Beginnings Home Daycare for 2010
- Letter from Claimant received 23 September 2011 in response to NPFC's letter requesting additional information

On 21 September 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 23 September 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The claim was assigned Claimant ID #3329057 and claim #387653. The EAP claim was denied on 23 November 2010.⁶ Additionally, Claimant filed a Final Payment (FP) claim with the GCCF. The claim was assigned claim #9055740. The FP claim was denied on 08 June 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of either the EAP or FP claim as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the extent the amount of the claims presented to the RP are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1430 considers and addresses the loss of earnings up to the amount of \$4,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #387653 EAP and #9055740FP.

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 Claimant's tax returns for 2009 and 2010 show that her day care, Magical Beginnings Daycare, lost income in 2010.⁸ The Claimant provided tuition receipts to parents in 2010 but the receipts do not support the loss of \$1,600.00 a month that she

⁶ GCCF Denial Letter dated 23 November 2010

⁷ GCCF Denial Letter dated 08 June 2011

⁸ The Schedule C Profit or Loss from Business for 2009 shows income of \$13,248.00 and for 2010 income of \$516.00.

claims.⁹ The Claimant provided no statements from the parents that they could not pay the tuition due to the oil spill. The Claimant has not provided sufficient documentation to support her loss or that the perceived loss was due to the oil spill.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) that the 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: *Claims Adjudication Division*

Date of Supervisor's Review: *29 September 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ Letter from Claimant received 23 September 2011 in response to NPFC's letter requesting additional information