

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6906

5890/DWHZ
03 November 2011

Tamara Walker
[REDACTED]

RE: Claim Number: N10036-1434

Dear Ms. Walker:

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 N10036-1434 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 N10036-1434.

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	N10036-1434
Claimant	Tamara Walker
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity and Subsistence Use
Amount Requested	\$14,000.00

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 21 September 2011, Tamara Walker (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$7,000.00 in lost profits and impairment of earnings capacity and \$7,000.00 for loss of subsistence use to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill. Her total loss for both claims is \$14,000.00.

The Claimant alleges she caught seafood in Southeast Louisiana every weekend.¹ She stated she made dinner plates and sold them to support her family.²

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.

Loss of Earning Capacity

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 Letter of explanation undated.

² Letter of explanation undated.

- (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.

Loss of Subsistence Use

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for lost subsistence use claims. Specifically, each claim for loss of subsistence use of natural resources must:

- (a) Be for lost subsistence use and submitted by an eligible claimant;
- (b) Identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- (c) Describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- (d) Describe efforts to mitigate the subsistence use loss; and
- (e) Be based on the reasonable cost to replace the lost subsistence use of natural resources.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted:

- 1) Optional OSLTF claim form undated;
- 2) Letter of explanation undated.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$7,000.00 and loss of subsistence use for \$7,000.00 for a total of \$14,000.00.

On 23 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 30 September 2011.³

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment claim (EAP) with the GCCF in the amount of \$3,600.00 for lost wages and earnings.⁴ She was assigned Claimant ID #3155336 and claim #210079. This claim was denied.⁵ Additionally, Claimant filed a Full Review Final claim (FRF) for subsistence with the GCCF in the amount of \$8,000.00 she was assigned GCCF #9271536.⁶ This claim was denied.⁷ 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 her claim before the NPFC, i.e., that she lost profits and subsistence use as a result of the Deepwater Horizon oil spill. The NPFC deems each of the Claimant's two 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 N10036-1434 considers and addresses the earnings claimed both of the claims presented to the responsible party, specifically; GCCF Claim #'s 210079 (EAP) and 9271536 (FRF).

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an EAP for lost wages and earnings in the amount of \$3,600.00 to the RP. The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$7,000.00 to the NPFC therefore any amount claimed in excess of \$3,600.00 is hereby denied as not properly presented to the RP.

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.

Loss of Subsistence Use

The Claimant asserted that she went fishing and shrimping and sold boiled and fried seafood and supper plates each weekend.⁸ The NPFC requested documentation to support the assertion via certified letter delivered to the Claimant's address 30 September 2011.⁹ As of the date of this determination, the Claimant has not responded to the requested information.

³ USPS 7011 1150 0000 4636 2571.

⁴ Report from the GCCF dated 06 October 2011.

⁵ Report from the GCCF dated 06 October 2011.

⁶ Report from the GCCF dated 06 October 2011.

⁷ Report from the GCCF dated 06 October 2011.

⁸ Letter of explanation undated.

⁹ USPS 7011 1150 0000 4636 2571.

The subsistence use portion of her claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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.

Loss of Earning Capacity

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Any claimed amount of damages exceeding \$3,600.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and therefore, \$3,400.00 in lost profits is denied.¹⁰

In connection with a review of the \$3,600.00 portion of the claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim.¹¹ The letter requested, among other things, financial documentation for an accurate accounting of the Claimant's losses, a copy of her commercial fishing license, and documentation regarding causation.¹² It was sent on 23 September 2011.¹³ On 30 September 2011, the Claimant acknowledged receipt of the letter however as of the date of this determination, no response has been received by the NPFC. The mere assertion of lost earnings without documentation to support the assertions is insufficient to establish losses under the Oil Pollution Act of 1990. The Claimant has provided no documentation to substantiate her alleged loss of profits and impairment of earnings capacity or to show that her alleged loss of earnings was due to the Deepwater Horizon oil spill.

The lost profits and impairment of earnings capacity portion of her claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed (2) that her 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, and (3) \$3,400.00 is denied for failure to properly present to the RP.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/3/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁰ \$7,000 presented to the NPFC minus \$3,600 presented to the NPFC equals \$3,400.00.

¹¹ USPS 7011 1150 0000 4636 2571.

¹² NPFC request for additional information.

¹³ USPS 7011 1150 0000 4636 2571.