

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 8443

5890/DWHZ  
05 January 2012

LaBrenda A. Pleasant  
[REDACTED]

Re: Claim Number: N10036-1436

Dear Ms. Pleasant:

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 N10036-1436 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 N10036-1436.

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	N10036-1436
Claimant	LaBrenda A. Pleasant
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$24,000.00

### ***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 22 September 2011, LaBrenda A. Pleasant (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$24,000.00 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 working at Ashland Company (Ashland).<sup>1</sup> The Claimant asserts that due to the Deepwater Horizon oil spill, the Claimant lost her job at Ashland.<sup>2</sup> As a result, the Claimant asserts she suffered reduced income.<sup>3</sup>

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$24,000.00.

### ***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).

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<sup>1</sup> Optional OSLTF Claim Form signed 02 September 2011 and received 22 September 2011.

<sup>2</sup> Optional OSLTF Claim Form signed 02 September 2011 and received 22 September 2011.

<sup>3</sup> Optional OSLTF Claim Form signed 02 September 2011 and received 22 September 2011.

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).

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

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form signed 02 September 2011 and received 22 September 2011.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Month Claim with the GCCF for loss of profits and impairment of earnings capacity on 01 October 2010 in the amount of \$24,000.00.<sup>4</sup> The Claimant was assigned Claimant ID # 3067259 and Claim ID # 121597. The EAP Claim was denied on 28 October 2010.<sup>5</sup> Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 23 November 2010 in the amount of \$16,000.00.<sup>6</sup> The Claimant was assigned Claim ID # 9032953. The FRF was denied on 26 May 2011.<sup>7</sup>

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 her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant lost her job and as a result suffered reduced income. The NPFC deems the Claimant's denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1436 considers and addresses the earnings claimed in the Claimant's claims presented to the responsible party up to \$24,000.00; specifically GCCF Claim ID #'s 121597 (EAP) and 9032953 (FRF).

### **NPFC Determination**

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.

The claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$24,000.00 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.

The Claimant asserts that due to the Deepwater Horizon oil spill, she lost her job at Ashland and as a result suffered reduced income.<sup>8</sup> The Claimant, however, failed to prove a connection between the Deepwater Horizon oil spill and her purported loss resulting from the loss of her job. The Claimant's submission to the NPFC was limited to her Optional OSTLF Claim Form.<sup>9</sup> The information the Claimant provided in her Optional OSLTF Claim form did not meet her burden to prove that she suffered a loss due to the oil spill.

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<sup>4</sup> Report from the GCCF dated 23 December 2011.

<sup>5</sup> GCCF Denial Letter dated 28 October 2010.

<sup>6</sup> Report from the GCCF dated 23 December 2011.

<sup>7</sup> GCCF Deficiency Denial Letter dated 26 May 2011.

<sup>8</sup> Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form signed 02 September 2011 and received 22 September 2011.

<sup>9</sup> See list of the Claimant's provided documentation in 'The Claimant's Submission to the OSLTF' above.

Nevertheless, in an effort to verify the effect of the Deepwater Horizon oil spill on the Claimant's employment with Ashland, on 01 December 2011 the NPFC made a Request For Additional Information.<sup>10</sup> The NPFC requested the following information: full and complete Federal Tax Returns from 2008-2010 including all W-2's and 1099's, bank statements from 2008-2011, pay stubs from 2010-2011 and letters from Ashland and any other employer verifying the effect on the Claimant's employment due to the Deepwater Horizon oil spill.<sup>11</sup> As of the writing of this determination, no response has been received from the Claimant regarding any of the above listed items. Accordingly, the Claimant failed to prove that she suffered reduced income due to the Deepwater Horizon oil spill.

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

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *1/5/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>10</sup> NPFC Request for Additional Information dated 01 December 2011.

<sup>11</sup> NPFC Request for Additional Information dated 01 December 2011.