

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 1150 0000 4636 4742

5890/DWHZ  
Claim # N10036-1437  
28 October 2011

Tameka McJimson  
[REDACTED]

Re: Claim Number: N10036-1437

Dear Ms. McJimson:

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 N10036-1437 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 N10036-1437.

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	N10036-1437
Claimant	Tameka McJimson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

### ***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, Tameka McJimson (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$10,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant operates a business providing child care services<sup>1</sup> in the Pascagoula, Mississippi region.<sup>2</sup> Specifically, the Claimant is a participant in the Southern Mississippi Planning and Development District Child Care Department program.<sup>3</sup> As a participant in that program, the Claimant is paid by the Planning and Development District to provide child care services for her nephew and niece.<sup>4</sup> The Claimant's mother retains legal custody of the nephew and niece and the Claimant asserted that her ability to be paid is dependent on the amount of work obtained by her mother.<sup>5</sup> The Claimant asserted that during the time of the Deepwater Horizon oil spill, her mother worked for the Comfort Inn hotel in Moss Point, Mississippi, and the mother's hours working at the hotel allowed the Claimant to be paid for providing child care services.<sup>6</sup> The Claimant also asserted that during the summer of 2010, the hotel experienced a reduction in occupancy directly because of the reduction in oil spill cleanup workers that were lodged in the hotel.<sup>7</sup> The Claimant stated that due to the reduction of workers, the hotel lost occupancy and subsequently the Claimant's mother lost working hours.<sup>8</sup> This reduction in the Claimant's

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<sup>1</sup> The Claimant's submission to the NPFC included information regarding another business the Claimant operates, a hair salon. The Claimant, however, informed the NPFC in a phone conversation on 10 October 2011 that her claim with the NPFC asserting damages from the Deepwater Horizon oil spill is specifically for damages to her child care business. Accordingly, this determination will only address the purported losses from the Claimant's child care services business.

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

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

<sup>4</sup> <http://www.smpdd.com/departments/child-care/about-the-child-care-department.html> (last accessed 11 October 2011).

<sup>5</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

<sup>6</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

<sup>7</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

<sup>8</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

mother's working hours reduced the amount of time the Claimant could provide child care services and as a result reduced the amount of income she could earn.<sup>9</sup>

The Claimant provided the following explanation regarding the calculation of her sum certain of \$10,000.00: the Claimant examined her Schedule C Federal Tax Return forms from 2007-2010 and estimated the amount of money that she lost in 2010 was \$10,000.00.<sup>10</sup>

### ***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).

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:

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<sup>9</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

<sup>10</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

- (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 OSLTF Claim Form received 22 September 2011;
- Attachment to OSLTF Claim Form describing claim;
- 2010 Form 1099-MISC Miscellaneous Income from Southern Mississippi Planning and Development District, Inc.;
- 2009 Form 1099-MISC Miscellaneous Income from Southern Mississippi Planning and Development District, Inc.;
- 2008 Form 1099-MISC Miscellaneous Income from Southern Mississippi Planning and Development District, Inc.;
- Documents titled Provider Payments By Month-Provider ID dated 10 June 2011;
- Document listing forms for Federal Tax Return for Tax Year 2009;
- 2010 Form 1040 Federal Tax Return;
- Refund Notice from the Internal Revenue Service dated 21 June 2010;
- Southern Mississippi Planning and Development District, Inc. Remittance Advice for dates 16 June 2011, 15 March 2007, 15 March 2011 and 15 July 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) One Month Claim with the GCCF for loss of profits and impairment of earnings capacity on 28 October 2010 in the amount of \$5,200.00.<sup>11</sup> The Claimant was assigned Claimant ID # 3311833 and Claim ID # 369085. The EAP Claim was denied on 23 November 2010.<sup>12</sup> Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 28 October 2010.<sup>13</sup> The Claimant was assigned Claim ID # 9052137. The FRF Claim was denied.<sup>14</sup> Additionally, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF for loss of profits and impairment of earnings capacity on 04 January 2011.<sup>15</sup> The Claimant did not include a sum certain on her ICQ12011 Claim.<sup>16</sup> The Claimant was assigned Claim ID # 9146223. The ICQ12011 was denied on 04 June 2011.<sup>17</sup> Additionally, the Claimant filed an Interim Payment Claim Quarter II 2011 (ICQ22011) with the GCCF for loss of profits and impairment of earnings capacity on 15

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<sup>11</sup> Report from the GCCF dated 06 October 2011.

<sup>12</sup> GCCF Denial Letter dated 23 November 2010.

<sup>13</sup> Report from the GCCF dated 06 October 2011.

<sup>14</sup> GCCF Claimant Status page.

<sup>15</sup> Report from the GCCF dated 06 October 2011.

<sup>16</sup> Report from the GCCF dated 06 October 2011.

<sup>17</sup> GCCF Deficiency Denial Letter dated 04 June 2011.

June 2011 in the amount of \$10,000.00.<sup>18</sup> The Claimant was assigned Claim ID # 9400121. The ICQ22011 was denied on 20 August 2011.<sup>19</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 the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant's mother suffered reduced working hours at the Comfort Inn, which subsequently reduced the amount of hours the Claimant could collect income from providing child care services. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1437 considers and addresses the earnings claimed in the claim up to \$10,000.00 presented to the responsible party, specifically; GCCF Claim #'s 369085 (EAP), 9052137 (FRF), 9146223 (ICQ12011) and 9400121 (ICQ22011).

### **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.

The claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$10,000.00 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 asserted that due to the Deepwater Horizon oil spill, her mother suffered a reduction of her working hours at Comfort Inn, which subsequently reduced the number of hours that the Claimant could collect income from providing child care services.<sup>20</sup> As a result, the Claimant asserted she lost income beginning in April 2010 and lasting until August 2011.<sup>21</sup> The Claimant, however, failed to provide a connection between her purported loss of income and the effects of the Deepwater Horizon oil spill.

In the effort to verify the Claimant's submission, the NPFC contacted the Claimant to obtain additional information regarding the effect of the Deepwater Horizon oil spill on the Claimant's employment providing child care services for her mother. In a subsequent phone conversation with the Claimant, the Claimant stated that the Comfort Inn her mother worked at had few vacancies in the beginning of the summer of 2010 because the hotel was being used to house workers for the oil spill cleanup effort.<sup>22</sup> The Claimant stated that as the oil spill cleanup wound down, the number of oil spill workers at the hotel decreased, which in turn reduced the number of hours that the Claimant's mother was working at the hotel.<sup>23</sup>

Rather than proving that the Deepwater Horizon oil spill caused a reduction in the amount of hours that the Claimant's mother worked, and by extension, the number of hours the Claimant was able to work, the presence of the oil spill cleanup workers at the Comfort Inn provided the

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<sup>18</sup> Report from the GCCF dated 06 October 2011.

<sup>19</sup> GCCF Denial Letter dated 20 August 2011.

<sup>20</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

<sup>21</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

<sup>22</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

<sup>23</sup> PHONECON between the NPFC and the Claimant dated 10 October 2011.

Claimant's mother with demand for employment during the summer of 2010. Thus, the Claimant failed to prove that she suffered a loss due to the Deepwater Horizon oil spill.

Furthermore, the Claimant has not proven that she suffered a loss due to the Deepwater Horizon oil spill at all. Examining the dates of the Claimant's wage earnings of \$4,111.20<sup>24</sup> in 2010, \$4,745.64<sup>25</sup> in 2009 and \$3,036.76<sup>26</sup> in 2008, the Claimant grossed greater earnings in 2010 during the spill period than what she earned during the same period in prior years, despite the presence of the oil spill, than in 2008 & 2009, when there was no oil spill. Thus, the Claimant failed to prove that she suffered a financial loss in 2010 due to the effects of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her 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: *NPFC Claims Adjudication Division*

Date of Review: *10/28/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>24</sup> 2010 Form 1099-MISC Miscellaneous Income from Southern Mississippi Planning and Development District, Inc..

<sup>25</sup> 2009 Form 1099-MISC Miscellaneous Income from Southern Mississippi Planning and Development District, Inc..

<sup>26</sup> 2008 Form 1099-MISC Miscellaneous Income from Southern Mississippi Planning and Development District, Inc..