

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 1570 0001 4802 6876

5890/DWHZ
Claim # N10036-1443
28 October 2011

Cassandra A. Waller
[REDACTED]

Dear Ms. Waller:

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 N10036-1443 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 N10036-1443.

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	N10036-1443
Claimant	Cassandra A. Waller
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$20,500.00

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 23 September 2011, Cassandra A. Waller (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,500.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked for Jazzy Hush Catering Company in New Orleans, Louisiana, from 14 January 2010 to 20 April 2010 as a wait staff supervisor.¹ The Claimant stated she lost her job at Jazzy Hush and lost earnings due to the Deepwater Horizon oil spill.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.

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 by Marquita Brown, owner of Jazzy Hush Catering Company, explaining Claimant's employment. Letter is undated.

² OSLTF Claim Form signed by the Claimant 23 September 2011

- (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 the Claimant 23 September 2011
- Letter by Marquita Brown, owner of Jazzy Hush Catering Company, explaining Claimant's employment. Letter is undated.
- W-2 Wage and Tax Statement from Jazzy Hush Catering Company for 2010
- Pay Stubs for 2010 from Jazzy Hush Catering Company for 2010

On 26 September 2010, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. USPS Tracking shows the Claimant received the letter 04 October 2011.³ The Claimant has not responded to the request.

³ USPS Tracking Receipt Number 7011 1150 0000 4636 2649

Before presenting the claim to the NPFC, the Claimant filed an Interim Claim (IC1Q2011) to the GCCF on 17 May 2011.⁴ The claim was assigned Claimant ID #3519930 and claim #9381840.⁵ The Interim claim “is in the review process and no letter has yet been issued.”⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claim 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 the IC1Q2011 claim as of the date of this determination. The NPFC deems the GCCF claim to be properly presented to the Responsible Party. To the extent the amount of the claim presented to the Responsible Party 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 N10036-1443 considers and addresses the loss of earnings up to the amount of \$20,500.00 for the claim presented to the Responsible Party, specifically: GCCF Claim #9381840 IC1Q2011.

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 did not respond to the NPFC letter of 26 September 2011 requesting additional information. On 17 October 2011, the NPFC Claims Adjuster followed up with the Claimant via telephone. The NPFC Claims Adjuster granted the Claimant a 21 October 2011 deadline. The Claimant did not provide the requested information by the deadline and on 25 October 2011, the Claimant instructed the NPFC Adjuster via telephone to proceed with her claim based only on the documentation in her original submission.

The Claimant stated that her loss of earnings of \$20,500.00 is what she would have earned at Jazzy Hush Catering Company if she had not lost her job. However, the Claimant provided insufficient documentation to support her loss of earnings. She only provided documents showing her 2010 earnings from Jazzy Hush Catering Co.⁷ The Claimant provided no documents showing her earnings for previous years or after April 2010. The earnings from Jazzy Hush are only for three months which is an insufficient time to demonstrate an earnings trend or calculate expected earnings.⁸

⁴ Date of filing the Interim Claim is based on the Claimant’s OSLTF Claim Form

⁵ GCCF On-Line Claim Status dated 27 October 2011

⁶ GCCF On-Line Claim Status dated 27 October 2011

⁷ W-2 Wage and Tax Statement from Jazzy Hush Catering Company for 2010 and Pay Stubs for 2010 from Jazzy Hush Catering Company for 2010

⁸ Letter by Marquita Brown, owner of Jazzy Hush Catering Company, explaining Claimant’s employment. Letter is undated. The letter states she worked from 14 January 2010 to 20 April 2010

The Claimant stated that her loss was due to the Deepwater Horizon oil spill. However, the Claimant provided insufficient documentation to support her statement. The NPFC Claims Adjuster attempted to contact the owner of Jazzy Hush to corroborate the claim but was unable to do so. The NPFC Claims Adjuster telephoned the owner on 25 and 26 October 2011 and got a voice message that the subscriber was not accepting incoming calls. On 25 October 2011, the NPFC Claims Adjuster e-mailed the owner and as of the date of this letter has received no response.

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: *28 October 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments: