

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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 1150 0000 4636 2373

5890/DWHZ
04 October 2011

Mr. Arthur Mitchell
[REDACTED]

Re: Claim Number: N10036-1451

Dear Mr. Mitchell:

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 N10036-1451 involving the Deepwater Horizon oil spill. 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 N10036-1451.

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	N10036-1451
Claimant	Mr. Arthur Mitchell
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$2,000.00

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 28 September 2011, Mr. Mitchell, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$2,000.00 in loss of profits and impairment of earnings capacity.¹

At the time of the oil spill, the Claimant was working as a waiter in a hotel in Houma, Louisiana.² The Claimant alleged that he “received less tips after the spill . . . and went from earning about \$200.00 - \$250.00 a month to less than \$40.00 a month for about six months.”³

The Claimant alleged that due to a decrease in tips, as well as a reduction in his working hours, he sustained losses of \$2,000.00. In his submission to the NPFC, the Claimant stated that he “had to end up quitting because of the drop in tips”⁴ but also claims that he “was eventually laid off.”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.

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 Optional OSLTF Claim Form, dated 14 September 2011.

² Optional OSLTF Claim Form, dated 14 September 2011.

³ Optional OSLTF Claim Form, dated 14 September 2011.

⁴ Optional OSLTF Claim Form, dated 14 September 2011.

⁵ Letter from the Claimant to the NPFC, 22 August 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 undertake, 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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 28 September 2011;
- Claimant Pay slips from 1/10/10 to 12/10/10;
- Letter to Claimant from the National Pollution Funds Center dated 11 August 2011 distinguishing between the GCCF and NPFC claims process
- GCCF Interim Claim Submission.
- Verification of Employment Letter from Claimant's former employer, Quality Hotel, dated 19 May 2011.

Prior to presentment to the NPFC, the Claimant presented a Second Quarter Interim Claim (ICQ22011) to the RP/GCCF seeking loss of profits and impairment of earnings.⁶ The Claimant was assigned Claimant ID 3521149 and the ICQ22011 claim was assigned Claim # 9385731.⁷ This claim was denied on 27 May 2011.⁸

⁶ GCCF Claimant Status, accessed on 3 October 2011.

⁷ GCCF Claimant Status, accessed on 3 October 2011.

⁸ GCCF Claimant Status, accessed on 3 October 2011.

On 28 September 2011, the Claimant presented this claim to the NPFC, seeking loss of profits and impairment of earnings capacity in the amount of \$2,000.00. The NPFC may adjudicate this claim to the extent that this claim has been presented to and denied by the RP/GCCF. Any amount of damages now presented to the NPFC, which were not first presented to the RP/GCCF are denied for improper presentment.⁹

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, 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 this claim.

In order to prove a claim for loss of profits and impairment of earnings capacity, a claimant must demonstrate (1) that he sustained an actual loss or reduction in income, and (2) that any loss of income sustained by a claimant was caused by effects of the Deepwater Horizon oil spill.

The Claimant alleged that business at the hotel in Houma, Louisiana, where the Claimant was employed slowed following the oil spill, thereby causing the Claimant to sustain a reduction in his working hours as well as a decrease in earned tips.¹⁰ The NPFC contacted a manager of the hotel to verify the Claimant's employment status and reason for his loss of income. The manager stated that the Claimant was terminated for reasons unrelated to the Deepwater Horizon oil spill and confirmed that the Claimant did not voluntarily leave his position, as indicated on his OLSTF Claim form.¹¹ The Claimant has not provided any documentation or other evidence to indicate that his position was actually affected by the Deepwater Horizon oil spill.

Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

This claim is denied because the Claimant (1) has materially misrepresented elements of this claim in order to falsely obtain funds from the Federal Government, (2) failed to meet his burden to prove that he sustained a loss in profits in the amount of \$2,000.00, and (3) failed to prove 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 Supervisor's Review: *10/4/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ 33 C.F.R. § 136.133(a).

¹⁰ Optional OLSTF Claim Form, dated 14 September 2011.

¹¹ PHONECON: NPFC Staff and Quality Hotel Staff, 3 October 2011.