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 0470 0000 8895 4837

5890/DWHZ
23 January 2012

Bonnie Sue Martin
[redacted]

Re: Claim Number: N10036-1456

Dear Ms. Martin:

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 N10036-1456 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 N10036-1456.

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	N10036-1456
Claimant	Bonnie Sue Martin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$6,450.00

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 29 September 2011, Bonnie Sue Martin, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking $6,450.00 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 employed by SunStream, Inc (SunStream) specifically at the GullWing Beach Resort in Fort Myers Beach, Florida.[1] The Claimant asserts that due to the Deepwater Horizon oil spill, the GullWing experienced a combination of customers cancelling existing reservations as well as a decreased demand for customers booking reservations.[2] As a result, the Claimant asserts that she did not receive a salary bonus in 2010.[3] Additionally, the Claimant asserts that due to the oil spill SunStream reduced its contribution for their employee's medical benefits.[4] As a result of not receiving a bonus as well as having to contribute more to her health benefits, the Claimant asserts she suffered reduced income.[5]

The Claimant did not provide an explanation regarding the calculation of her sum certain of $6,450.00.

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).

[1] Letter from the Claimant to the NPFC dated 17 September 2011.
[2] Letter from the Claimant to the NPFC dated 17 September 2011.
[3] Letter from the Claimant to the NPFC dated 17 September 2011.
[4] Letter from the Claimant to the NPFC dated 17 September 2011.
[5] Optional OSLTF Claim Form signed 17 September 2011 and received 29 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 17 September 2011 and received 29 September 2011;
- Letter from the Claimant to the NPFC dated 17 September 2011;
- Letter from SunStream dated 11 August 2011;

- SunStream Income Statement for period ending 31 December 2009;
- SunStream Income Statement for period ending 31 December 2010;
- Spreadsheet containing pay period history for period 30 May 2010-26 December 2010;
- GCCF Denial Letter dated 11 August 2011;
- SunStream Earnings Statement for period ending 12 June 2011.

Prior to presenting her claim to the NPFC, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF for loss of profits and impairment of earnings capacity on 04 August 2011 in the amount of $6,450.00.[6] The Claimant was assigned Claimant ID # 3535358 and Claim ID # 9430259. The ICQ32011 was denied on 11 August 2011.[7]

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim 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 did not receive a bonus in 2010 while also paying increased medical benefits costs. As a result, the Claimant suffered reduced income. The NPFC deems the Claimant's denied GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1456 considers and addresses the earnings claimed in the Claimant's claim as presented to the responsible party specifically; GCCF Claim # 9430259 (ICQ32011).

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 $6,450.00 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, the hotel she worked at, GullWing, experienced a combination of customers cancelling existing reservations as well as a decreased demand for customers booking reservations.[8] As a result, the Claimant asserts SunStream did not pay bonuses in 2010.[9] Further, the Claimant asserts that SunStream reduced its contribution to employee health benefits.[10] As a result of not being issued a bonus as well as having to contribute more to her health benefits, the Claimant asserts she suffered reduced income.[11] The Claimant, however, failed to prove a connection between the Deepwater Horizon oil spill and the lack of a bonus and the increased costs of health benefits.

Regarding the Claimant's assertion that she was not paid a bonus due to the Deepwater Horizon oil spill, the Claimant failed to meet her burden to prove that the oil spill was the reason she did not receive a bonus. The Claimant included in her submission to the NPFC a letter from SunStream containing information on the company's decision to withhold certain employee benefits in 2010.[12] That letter,

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[6] Report from the GCCF dated 11 January 2012.
[7] GCCF Denial Letter dated 11 August 2011.
[8] Letter from the Claimant to the NPFC dated 17 September 2011.
[9] Letter from the Claimant to the NPFC dated 17 September 2011.
[10] Letter from the Claimant to the NPFC dated 17 September 2011.
[11] Optional OSLTF Claim Form signed 17 September 2011 and received 29 September 2011.
[12] Letter from SunStream dated 11 August 2011.

coupled with additional information gathered from SunStream, indicated that SunStream set benchmarks for both hotel room revenue and occupancy percentage.[13] Employee bonuses[14] would be authorized when the specific resorts met those benchmarks. In 2010, SunStream established a room revenue benchmark for GullWing of $3,471,664.00 despite only grossing $3,424,873.00 in room revenue in 2009. In order to determine the effect of the Deepwater Horizon oil spill on SunStream's bonus structure, the NPFC undertook an analysis of the GullWing hotel that included financial information and room occupancy numbers from 2007-2010.[15] The analysis showed GullWing experiencing a downward trend in room revenue beginning in 2009.[16] Furthermore, even in the pre-oil spill months of January 2010-April 2010, GullWing experienced lower revenue sales, $1,565,801.00,[17] than in the corresponding time period in 2009 of $1,673,959.00.[18] Thus, despite establishing a higher revenue benchmark for bonuses to be paid in 2010, by April 2010, GullWing was already on course to gross lower revenues than it had in 2009.

Moreover, information obtained from SunStream stated that GullWing's benchmark to qualify for bonuses in 2009 was $3,566,476.00 but that the actual revenue was only $3,424,873.00.[19] Despite failing to meet the target, SunStream decided to pay bonuses anyway in 2009.[20] In 2011, after the cessation of the oil spill, SunStream declined to pay, or even budget for, employee bonuses.[21] Accordingly, SunStream's assessment to pay bonuses in 2009, 2010 and 2011 were independent business decisions based upon the discretionary nature of their bonus program. Thus, the Claimant failed to prove that SunStream ceased paying bonuses in 2010 due to the Deepwater Horizon oil spill.

It should also be noted that SunStream provided the NPFC with a list of five patrons who purportedly cancelled their reservations at the GullWing due to the Deepwater Horizon oil spill.[22] Although the NPFC attempted to verify this information with each patron, the NPFC could only reach[23] one of the five. In the conversation that followed, the NPFC was informed that the Deepwater Horizon oil spill was not the reason that the patron cancelled their reservation.[24]

Regarding the increase in the Claimant's payments for her medical benefits, the Claimant's evidence that Sunstream decreased its payments for medical benefits due to the oil spill is unconvincing. Although a letter[25] from SunStream alleges that a change in employee benefit contributions was made due to the Deepwater Horizon oil spill, the company fails to articulate a reason connecting the Deepwater Horizon oil spill with a change in benefit contributions. Rather, it appears that Sunstream made an independent business decision to reduce medical benefit contributions in order to reduce expenses for the company. Further, these saved expenses will continue well after the Deepwater Horizon oil spill, as SunSteam has not reverted to pre-2010 contribution levels and has no future plans to do so.[26] Thus, SunStream's

[13] Letter from SunStream dated 19 December 2011.
[14] The benchmarks for occupancy percentage and revenue were irrelevant in SunStream's decision to reduce its contribution to employee health benefits. See below for a full discussion regarding that aspect of the Claimant's claim.
[15] NPFC GullWing Statistics.
[16] NPFC GullWing Statistics.
[17] NPFC Financial Calculations.
[18] NPFC Financial Calculations.
[19] Letter from SunStream dated 19 December 2011.
[20] Letter from the Claimant to the NPFC dated 17 September 2011.
[21] Letter from SunStream dated 19 December 2011.
[22] Letter from SunStream dated 19 December 2011.
[23] One of the listed phone numbers did not correspond to the listed patron.
[24] PHONECON between the NPFC and 12 January 2012.
[25] Letter from SunStream dated 11 August 2011.
[26] Letter from SunStream dated 19 December 2011.

decision to decrease its contribution to medical benefits is not due to the Deepwater Horizon oil spill but rather an independent business decision which has significantly lowered premium costs to the employer.[27]

This claim is denied because the Claimant failed to meet her burden to demonstrate 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: ***1/23/12***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[27] Letter from SunStream dated 19 December 2011.