

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4889

5890/DWHZ
07 October 2011

Mr. Edward Charles III
[REDACTED]

Re: Claim Number: N10036-1457

Dear Mr. Charles:

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 N10036-1457 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 N10036-1457.

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	N10036-1457
Claimant	Mr. Edward Charles III
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$16,398.73

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 30 September 2011, Mr. Edward Charles III (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$16,398.73 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant alleged to have been working at a small catering business in New Orleans, Louisiana.² The Claimant alleged that he was laid off on 22 April 2010 because of the oil spill, as the oil spill caused the catering company to close due to “lack of seafood.”³ The Claimant has not sought alternate employment, or otherwise attempted to mitigate his losses since the loss of his position on 22 April 2010, because he “was waiting for a final payment from the GCCF.”⁴ The Claimant alleged that he earned \$16.50/hour plus tips in his position as “lead cook” for a small catering company, and seeks loss of profits and earnings capacity damages in the amount of \$16,398.73.⁵

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:

¹ Optional OSLTF Claim Form, dated 21 September 2011.

² Letter from Myrna Guity, undated.

³ Optional OSLTF Claim Form, dated 21 September 2011.

⁴ Optional OSLTF Claim Form, dated 21 September 2011.

⁵ Letter from Myrna Guity, undated.

- (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 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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 21 September 2011;
- Re-review Determination Letter on Interim Payment/Final Payment Claim, 22 August 2011;
- Letter from Myrna Guity, stating that the Claimant lost his job on 22 April 2010;
- Letter from Myrna Guity, stating that the Claimant was laid off due to the oil spill;
- 2010 W-2 Wage and Tax Statement;
- ADP earnings statement, 2/2/2010;
- ADP earnings statement, 2/16/2010;
- ADP earnings statement, 3/2/2010;
- ADP earnings statement, 3/15/2010;
- ADP earnings statement, 3/30/2010;
- ADP earnings statement, 4/12/2010.

Prior to presentment to the NPFC, the Claimant presented a Third Quarter Interim Claim (ICQ32011) to the RP/GCCF. The Claimant was assigned Claimant ID 3533834 and the ICQ32011 claim was assigned Claim # 9426080.⁶ This Claim was paid in the amount of \$16,398.73 on 22 August 2011.⁷

The Claimant was also offered a final payment of \$16,398.73 on 22 August 2011. The Claimant accepted this offer on 23 August 2011, but as of the date of this letter, has not executed the GCCF Release and Covenant Not to Sue in return for final payment.⁸

On 30 September 2011, the Claimant submitted this claim to the NPFC, seeking \$16,398.73 in loss of profits and impairment of earnings capacity damages. The Claimant alleged that he executed a release and covenant not to sue, but has not been paid his final settlement offer amount of \$16,398.73, which he now seeks from the NPFC.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 financial loss, and (2) that the loss he sustained was due to the effects of the Deepwater Horizon oil spill.

The Claimant alleged that he was laid off from his position as a cook for a small catering company following the oil spill, as the oil spill “caused his job to close down due to lack of seafood.”¹⁰ However, the Claimant’s submission indicated that he was laid off on 22 April 2010, and the Claimant’s last pay stub was dated 12 April 2010.¹¹ Because the oil spill occurred on 20 April 2010, the Claimant’s allegation that the company was unable to obtain seafood, ultimately resulting in his layoff two days after the spill, is unfounded.

Furthermore, the Claimant has provided two letters from a Ms. Myrna Guity in support of his submission. The NPFC attempted to contact Ms. Guity in order to verify the statements in the letters, but the number provided to the NPFC had been disconnected.

Additionally, the NPFC reviewed the ADP Earning Statements provided by the Claimant, and note that they contain misspellings and appear to have been altered. 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.

⁶ GCCF Claimant Status, accessed on 4 October 2011.

⁷ Re-Review determination Letter on Interim Payment/Final Payment Claim, 22 August 2011.

⁸ GCCF Claimant Status, accessed on 4 October 2011.

⁹ Optional OSLTF Claim Form, dated 21 September 2011.

¹⁰ Optional OSLTF Claim Form, dated 21 September 2011.

¹¹ Earning Statement, 4/12/2010.

This claim is denied because substantial portions of this claim appear to have been materially misrepresented in order to try to obtain funds from the Federal Government. Furthermore, the Claimant has not met his burden to demonstrate (1) that he sustained a financial loss in the amount of \$16,398.73, and (2) that the losses the Claimant alleged to have incurred, were caused by the discharge or substantial threat of discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/7/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: