

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: 800-280-7118
E-mail:
arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4919

5890/DWHZ
11 October 2011

Mr. Lorenzo Finley



Re: Claim Number: N10036-1466

Dear Mr. Finley:

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 N10036-1466 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 N10036-1466.

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	N10036-1466
Claimant	Mr. Lorenzo Finley
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$38,400.00

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 4 October 2011, Mr. Lorenzo Finley (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$38,400.00 in loss of profits and impairment of earnings capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant worked as an oil spill responder from 19 July 2010 to 16 August 2010, and again from 2 November 2010 to 30 July 2011.² The Claimant alleged that he was “laid off by BP on two separate occasions”³ and lost income of \$4,000 per month during his periods of unemployment resulting from the BP layoffs.⁴

The Claimant alleged that due to the lay-offs from his position as an oil spill responder, the Claimant has sustained a loss of income in the amount of \$38,400.00.⁵

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 30 April 2011.

² Optional OSLTF Claim Form, dated 30 April 2011.

³ Optional OSLTF Claim Form, dated 30 April 2011.

⁴ Optional OSLTF Claim Form, dated 30 April 2011.

⁵ Optional OSLTF Claim Form, dated 30 April 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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 30 April 2011;
- 2008 Alabama Individual Income Tax Return, showing earnings of \$15,491.00;
- 2009 Form 1040, showing adjusted gross income of \$14,117.00;
- 2009 Schedule EIC (Form 1040A or 1040);
- Statement from Claimant regarding employment;
- Earnings Statement, 11/12/2010;
- Letter regarding the Claimant's unemployment, 12 August 2010;
- Pay stubs, 7/19/2010 – 7/25/2010;
- Confirmation of unemployment benefits;
- Claimant Profile Data sheet, 8/5/2011;
- Unemployment compensation payment history, 9/05/11;
- Fax Cover Sheet, dated 4 October 2011.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF, seeking loss of profits and earnings damages in the amount of

\$4,800.00.⁶ The Claimant was assigned ID 3029664 and the EAP claim was assigned Claim # 84565. This claim was paid in full on 31 August 2011.⁷

The Claimant then filed a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF, seeking loss of profits and wages damages. The ICQ12011 claim was assigned Claim # 9219126.⁸ On 31 August 2011, a determination was issued regarding this claim, in which the GCCF found that the Claimant had been fully compensated for any losses incurred, and offered the Claimant a final settlement amount of \$5,000.00.⁹ As of the date of this letter, the Claimant has not accepted the final offer.¹⁰

The NPFC may properly adjudicate this claim in the amount of \$38,400.00, to the extent that this amount was presented to the RP/GCCF in the ICQ12011 claim. Any damage amount now before the NPFC, which was not first presented to the RP/GCCF is denied for improper presentment.¹¹

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, the Claimant must demonstrate (1) that he sustained a loss or reduction in profits and earnings, and (2) that the loss was caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

This claim is based on the Claimant's loss of income, resulting from the Claimant's lay-off from his position working as an oil spill responder. However, loss of income which was gained as a result of the oil spill does not represent an OPA compensable loss. Rather, OPA requires that any income gained from the oil spill, be subtracted from the Claimant's losses as presented to the NPFC.¹² Because the Claimant actually earned income from employment that was secured as a result of the oil spill, the Claimant has not demonstrated that the Deepwater Horizon oil spill caused him to sustain a loss or reduction in income.

⁶ GCCF Claimant Status, accessed on 6 October 2011.

⁷ Notice of Emergency Advance Payment Determination, 31 August 2011.

⁸ GCCF Claimant Status, accessed on 6 October 2011.

⁹ Determination Letter on Interim Payment/Final Payment Claim, 31 August 2011.

¹⁰ Confirmed in PHONECON: NPFC Staff and the Claimant, 6 October 2011.

¹¹ 33 C.F.F. §136.103(a).

¹² 33 C.F.R. §135.235(a).

This claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that he sustained an actual financial loss in the amount of \$38,400.00, and (2) that the losses incurred by the Claimant were a result of the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments: