

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
11 October 2011

Ms. Daffalyn Duplessis



Re: Claim Number: N10036-1473

Dear Ms. Duplessis:

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 N10036-1473 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 N10036-1473.

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	N10036-1473
Claimant	Ms. Daffalyn Duplessis
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$5,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On October 6, 2011, Ms. Daffalyn Duplessis (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working at the Bergeron's New Orleans Food and Sprints Company.² The Claimant alleged that she sustained a loss of wages totaling \$5,000.00 due to a reduction in her employment hours following the Deepwater Horizon oil spill.³

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.
- (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

¹ Optional OSLTF Claim Form, postmarked 26 September 2011.

² Optional OSLTF Claim Form, postmarked 26 September 2011.

³ Optional OSLTF Claim Form, postmarked 26 September 2011.

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, posted 27 September 2011 and Personal Statement
- Payroll Journal dated October 21, 2010
- Payroll stubs for October 3 thru 9, 2010; October 10 thru 16, 2010; and October 17 thru 23, 2010
- Form W-2 Wage and Tax Statements for 2009 and 2008
- Form 1040 A Tax Returns for 2009 and 2008
- Menus for the New Orleans Food and Spirit restaurant

Prior to presentation to the NPFC, the Claimant presented an Emergency Advance Payment claim (EAP) to the RP/GCCF, seeking an unspecified amount in loss of profits and impairment of earnings capacity.⁴ The Claimant was assigned claimant ID 3149837 and the EAP claim was assigned Claim # 214312. The EAP claim was denied on 6 April 2011.⁵

The Claimant then presented an Interim Payment (ICQ12011) claim and a Full Review Final (FRF) claim to the RP/GCCF of unspecified amounts. The ICQ12011 claim was assigned Claim # 9195158 and FRF claim was assigned 9046296. The RP/GCCF denied both claims.⁶

On 06 October 2011, the Claimant presented this claim to the NPFC, seeking \$5,000.00 in loss of profits and impairment of earnings capacity.⁷ This NPFC determination addresses this claim

⁴ GCCF Claimant Status, accessed on 8 October 2011.

⁵ Emergency Advance Payment Determination, 6 December 2010.

⁶ Denial Letter on Interim Payment/Final Payment Claim, 6 April 2011.

⁷ Optional OSLTF Claim Form, dated 9 September 2011.

in the amount of \$5,000.00 to the extent that that amount was previously presented in the Claimant's EAP, ICQ12011, and FRF claims. Any amounts claimed now before the NPFC which were not first presented to the RP/GCCF are denied for improper presentment.⁸

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 she 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 she sustained a loss of income because her hours of employment were reduced when her employer, New Orleans Food and Spirits, incurred business losses following the Deepwater Horizon oil spill.⁹ The Claimant provided payroll statements for work periods in April 2010 and October 2010 as documentation to support her claim. The Claimant also provided copies of returns for tax years 2009 and 2008. The documents provided indicated that the Claimant's annual income increased between 2008 and 2009 and that her income appeared to decrease for the period from 1 January 2010 through 23 October 2010. However, the documents do not substantiate that the Claimant's decrease in employment hours and attendant income diminution were caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill. Furthermore, the Claimant has not provided information which supports her claimed loss of \$5,000.00.

This claim is denied because the Claimant failed to meet her burden to prove (1) that she sustained a loss in profits in the amount of \$5,000.00, 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: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ 33 C.F.R. 133.103(a).

⁹ See Claimant's Personal Statement