

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: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5961

5890/DWHZ
Claim # N10036-1476
20 October 2011

Sheryl Ray
[REDACTED]

Re: Claim Number: N10036-1476

Dear Ms. Ray:

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 N10036-1476 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 N10036-1476.

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	N10036-1476
Claimant	Sheryl Ray
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$55,200.00

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 06 October 2011, Sheryl Ray, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$55,200.00 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 worked at St. George Island Vacation Properties in the St. George Island, Florida region.¹ Specifically, the Claimant worked as a housekeeper.² The Claimant asserted that due to the Deepwater Horizon oil spill, she experienced a reduction in the number of houses that she cleaned and by extension she suffered reduced income.³

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$55,200.00.

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).

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).

¹ Letter from the Claimant dated 27 September 2010.

² Letter from the Claimant dated 27 September 2010.

³ Letter from the Claimant dated 27 September 2010.

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 received 06 October 2011;
- Letter from the Claimant dated 27 September 2010;
- Letter from Tracy Garner dated 16 May 2011;⁴
- Letter from Tracy Garner dated 25 June [year unreadable];
- Document titled 'Resort Vacation Properties' Vendor Payment History for period 31 January 2010-23 September 2010;
- Jackson Hewitt Tax Service Federal and State Refund dated 03 March 2009;
- 2008 Form 1040 Federal Tax Return;
- 2009 Form 1040 Federal Tax Return;
- H & R Block Filing, Refund and Balance Due Information;
- H & R Block 2010 Tax Return Summary dated 11 February 2011;

⁴ See discussion of the authenticity of this letter in NPFC Determination.

- Document titled ‘The Tax Institute Implications of Key Tax Law Changes as of January 10, 2011;
- 2010 Form 1040 Federal Income Tax Return;
- Document Titled ‘Application Supplement for H & R Block Bank Refund Anticipation Check(s) And Refund Deposit Account’;
- 2010 Form 1040X Amended Federal Income Tax Return.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Month Claim with the GCCF.⁵ The Claimant was assigned Claimant ID # 1133456 and Claim ID # 40531. The GCCF issued payment on the EAP Claim on 21 September 2010.⁶ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF.⁷ The Claimant was assigned Claim ID # 9014710. As of this determination, the FRF is in the review process and no letter has yet to be issued on the claim.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced a reduction in demand for her housekeeping services and by extension lost income at her job at St. George Island Vacation Properties. The NPFC deems the Claimant’s GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1476 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim #’s 40531 (EAP) and 9014710 (FRF).

NPFC Determination

The claim is denied. 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 Claimant included in her submission to the NPFC a description of the effect the Deepwater Horizon oil spill had on her employment in 2010.⁹ The Claimant stated that due to the oil spill, the number of houses that she cleaned as a housekeeper plummeted, causing her to lose income in 2010.¹⁰ Additionally, in support of her claim, the Claimant included a letter containing the letterhead of her employer St. George Island Vacation Properties regarding her employment during the oil spill.¹¹

The NPFC contacted St. George Island Vacation Properties for verification of both the Claimant’s work history and the submitted letter. In a subsequent phone conversation, the NPFC was informed that as a policy, St. George Island Vacation Properties did not write letters for their housekeeping employees such as the Claimant.¹² Additionally, the NPFC was informed that instead of suffering a reduction in the number of available houses to clean, the Claimant accepted a payout from BP/GCCF and then quit her job at St. George Island Vacation Properties.¹³ Moreover, the NPFC was informed that the letter the

⁵ GCCF Claimant Status Page.

⁶ GCCF Notice of Determination Emergency Advance Payment dated 21 September 2010.

⁷ GCCF Claimant Status Page.

⁸ GCCF Claimant Status Page.

⁹ Letter from the Claimant dated 27 September 2010.

¹⁰ Letter from the Claimant dated 27 September 2010.

¹¹ Letter from Tracy Garner dated 16 May 2011.

¹² PHONECON between the NPFC and St. George Island Vacation Properties dated 18 October 2011.

¹³ PHONECON between the NPFC and St. George Island Vacation Properties dated 18 October 2011.

Claimant submitted with the letterhead of St. George Vacation Properties was not produced by an employee of St. George Island Vacation Properties.¹⁴

Additionally, upon review of the Claimant's 2008 through 2010 Federal Income Tax records, the Claimant had total income in 2008 of \$8,055.00, \$9,946.00 in 2009, and \$13,660.00 in 2010. Based on this financial information, the Claimant has failed to demonstrate she experienced a loss of earnings at all in 2010 when compared to her total income for the two years preceding the Deepwater Horizon oil spill incident therefore the Claimant has also failed to demonstrate a loss of earnings as alleged.

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 or omits a material fact may be subject to a civil penalty for each claim.

Claimant's request for \$55,200.00 is hereby denied because the evidence presented by the Claimant regarding the detailed information provided by the employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order to obtain funds from the Federal Government under false pretenses and the Claimant failed to demonstrate she experienced a loss in the amount alleged and as such, this claim is denied.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/20/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁴ Email from St. George Island Vacation Properties to the NPFC dated 18 October 2011.