

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7446

5890/DWHZ
28 November 2011

Lance D. Lanier



RE: Claim Number: N10036-1477

Dear Mr. Lanier:

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 claim number N10036-1477 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. 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 N10036-1477.

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 | N10036-1477 |
| Claimant | Lance Lanier |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$48,000.00 |

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 07 October 2011, Lance Lanier (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$48,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant works for Baker Hughes Oilfield Operations in the Drilling Fluids Environmental Services Division.¹ Claimant alleges that his income has severely declined since the Deepwater Horizon oil spill. In his letter to the GCCF, Claimant stated that:

“[t]he major part of my income is derived from working overtime hours. I do still make 40 hours a week (straight time with no overtime) while not offshore. While offshore, I made a minimum of 84 hours (40 hours straight plus 44 overtime).²

Claimant alleges his wages were reduced because he was unable to work the overtime hours associated with his offshore trips. As of 05 August 2011, the Claimant stated he worked only twice offshore for the year of 2011.³

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 § 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

¹ Letter to the GCCF dated 05 August 2011.

² Letter to the GCCF dated 05 August 2011.

³ Letter to the GCCF dated 05 August 2011.

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 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 his claim, the Claimant submitted:

- 1) Optional OSLTF claim form dated 07 October 2011
- 2) Contents of Fax cover-page
- 3) Letter to the GCCF dated 05 August 2011
- 4) GCCF denial letter on Interim payment/Final payment claim dated 16 August 2011
- 5) GCCF Interim claim form
- 6) 2008 W-2 from Baker Hughes Oilfield Operations
- 7) 2008 Form 1040 U.S. Individual Income Tax Return
- 8) 2009 W-2 from Baker Hughes Oilfield Operations

- 9) 2009 Form 1040 U.S. Individual Income Tax Return
- 10) 2010 W-2 from Baker Hughes Oilfield Operations
- 11) Paystub showing ytd earnings as of 12 August 2011
- 12) Paystub showing ytd earnings as of 30 April 2011
- 13) Paystub showing ytd earnings as of 01 May 2010
- 14) Paystub showing ytd earnings as of 10 April 2009

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$48,000.00. On 11 October 2011, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 15 October 2011.⁴

Prior to presenting his claim to the NPFC, the Claimant filed an Interim claim (ICQ32011) with the GCCF on 09 August 2011 in the amount of \$48,000.00.⁵ He was assigned Claimant ID #1629922 and claim #9433593.⁶ This claim was denied on 16 August 2011.⁷ Based upon the evidence provided by the Claimant, it appears that the subject matter for GCCF ICQ32011 claim is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied GCCF ICQ32011 claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1477 considers and addresses the earnings claimed in ICQ32011.

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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

On 11 October 2011, in connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate his claim.⁸ On 20 October 2011, the Claimant acknowledged receipt of the letter and telephoned the NPFC indicating that he needed an extension until 20 November 2011.⁹ The NPFC staff granted the extension.¹⁰ To date, no response has been received by the NPFC. The NPFC accordingly proceeded to evaluate the claim with the limited evidence the Claimant had originally submitted.

The Claimant earned \$55,252.80 for 2008,¹¹ \$54,480.63 for 2009,¹² and \$61,388.07 for 2010.¹³ The Claimant submitted paystubs for a comparison of his 2011 year to date (YTD) earnings as of

⁴ USPS tracking #7011 1150 0000 4666 6419.

⁵ Report from the GCCF dated 21 November 2011.

⁶ Report from the GCCF dated 21 November 2011.

⁷ GCCF Denial Letter dated 16 August 2011.

⁸ USPS tracking #7011 1150 0000 4666 6419.

⁹ NPFC telephone conversation between the Claimant and NPFC staff 20 October 2011.

¹⁰ NPFC telephone conversation between the Claimant and NPFC staff 20 October 2011.

¹¹ 2008 W-2 from Baker Hughes Oilfield Operations.

¹² 2009 W-2 from Baker Hughes Oilfield Operations.

¹³ 2010 W-2 from Baker Hughes Oilfield Operations.

01 May 2011. As of 30 April 2011, the Claimant's YTD earnings were \$14,019.08¹⁴ as compared to 01 May 2010 of \$22,387.64¹⁵ and 04 April 2009 of \$18,113.72.¹⁶ From the documentation provided, it appears that the Claimant was earning less for the same time period of 2011 as compared to the previous years of 2010 and 2009.

Regarding causation of the alleged damages, however, the evidence provided by the Claimant does not show that his alleged losses are due to the Deepwater Horizon oil spill. To the contrary, the Claimant cites to the moratorium and the departure of deepwater rigs from the Gulf of Mexico following the moratorium as the cause of his alleged damages.¹⁷

Accordingly, this claim is denied because the Claimant failed to meet his burden to demonstrate that his 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: *11/28/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁴ 2010 paystub from Baker Hughes Oilfield Operations dated 30 April 2011.

¹⁵ 2010 paystub from Baker Hughes Oilfield Operations dated 01 May 2010.

¹⁶ 2010 paystub from Baker Hughes Oilfield Operations dated 04 April 2009.

¹⁷ Optional OSLTF, block 10, dated 07 October 2011.