

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5992

5890/DWHZ
Claim # N10036-1479
20 October 2011

Annie Letha Phillips
[REDACTED]

Re: Claim Number: N10036-1479

Dear Ms. Phillips:

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 N10036-1479 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 N10036-1479.

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	N10036-1479
Claimant	Annie Phillips
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,990.00

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 05 October 2011, Annie Phillips (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$12,990.00 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 Memorial Hospital in the customer service department located in Gulfport, Mississippi.¹ The Claimant asserted that during the time of the oil spill, her mother and husband became ill and both required lengthy stays in the hospital.² The Claimant stated that it was her responsibility to take care of her mother and husband as well as to drive both of them to and from the hospital for their respective medical appointments.³ The Claimant stated that due to these tasks, she experienced a reduction in her working hours.⁴ Specifically, the Claimant stated that the normal eighty hour, two-week pay period was reduced to a thirty to forty hour, two-week pay period.⁵ As a result of the reduced hours, the Claimant asserted she lost income beginning in April 2010 and lasting until February 2011.⁶

The Claimant provided the following explanation regarding her sum certain of \$12,990.00: the Claimant calculated her lost wages of \$8,150.00 and added the cost of transportation in aid of her mother and husband of \$4,840.00 for a total of \$12,990.00.⁷ The Claimant adopted this amount as her sum certain.⁸

¹ PHONECON between the NPFC and the Claimant dated 18 October 2011.

² Optional OSLTF Claim Form received 05 October 2011.

³ Optional OSLTF Claim Form received 05 October 2011 and PHONECON between the NPFC and the Claimant dated 18 October 2011.

⁴ Optional OSLTF Claim Form received 05 October 2011.

⁵ PHONECON between the NPFC and the Claimant dated 18 October 2011.

⁶ PHONECON between the NPFC and the Claimant dated 18 October 2011.

⁷ Optional OSLTF Claim Form received 05 October 2011.

⁸ Optional OSLTF Claim Form received 05 October 2011.

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).

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 OSLTF Claim Form received 05 October 2011;
- Hand-written letter from the Claimant to the GCCF;
- Document titled 'Loss of Income Earnings: March 2010, July 2010 and February/March 2011';
- Document titled 'Memorial Hospital at Gulfport Discharge Medication List;
- Document titled 'Memorial Pre-Operative Questionnaire';
- Hand-written letter from Jeanette Simmons, RN;
- Gastroenterology Center Appointment Certification;
- Gastroenterology Center Procedure Prescription Form;
- Medical Records for dates 25 July 2010-28 July 2010, 16 March 2010-17 March 2010;
- Clinical Summary from Memorial Physician Clinics;
- Document titled 'History and Physical' with admitted dated 25 July 2010;
- Emergency Department Nursing Record from Memorial Hospital dated 25 July 2010;
- Emergency Department Physician Record dated 25 July 2010;
- History and Physical Examination dated 25 July 2010;
- Memorial Hospital MGH Cumulative Summary Report;
- Radiology Report with exam dates 25 July 2010 and 26 July 2010;
- Memorial Hospital Transthoracic Echocardiography Report;
- Memorial Hospital TTE Echocardiography Report;
- Memorial Hospital Discharge Planning Report;
- Memorial Hospital Emergency Department Nursing Record dated 16 March 2010;
- Memorial Hospital Emergency Department Physician Record dated 16 March 2010;
- Memorial Hospital MHG Cumulative Summary Report dated 17 March 2010;
- Radiology Report dated 16 March 2010;
- Memorial Hospital Transthoracic Echocardiography Report (TTE);
- Photocopies of receipts from Kessler Federal Credit Union for dated 05 March 2010 and 03 April 2010, Rent Receipt dated 06 February 2010;
- Photocopies of Monthly Loan Payment dated 05 March 2010 and Purchaser's Receipt from Whitney National Bank dated 04 January 2010;
- Receipt dated 05 June 2010;
- Photocopies of receipts from Kessler Federal Credit Union for dates 14 May 2010 and 07 August 2010, photocopies of receipts dates 05 June 2010 and 05 July 2010;
- Photocopy of receipt dated 05 August 2010;
- Letter from Adams & Edens to Cora Phillips dated 11 April 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP1) Claim with the GCCF for loss of profits and impairment of earnings capacity.⁹ The Claimant was assigned Claimant ID # 3124093 and Claim ID # 178930. The EAP1 was denied on 28 October 2010.¹⁰ Additionally, the Claimant filed an Emergency Advance Payment (EAP2) Claim with the GCCF for loss of profits and impairment of earnings capacity.¹¹ The Claimant was assigned Claim ID # 418123. The EAP2 was denied on 24 November 2010.¹²

⁹ GCCF Claimant Status Page.

¹⁰ GCCF Denial Letter dated 28 October 2010.

¹¹ GCCF Claimant Status Page.

¹² GCCF Denial Letter dated 24 November 2010.

Additionally, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF for loss of profits and impairment of earnings capacity.¹³ The Claimant was assigned Claim ID # 9489877. The ICQ32011 was denied on 24 September 2011.¹⁴ Additionally, the Claimant filed a Full Review Final (FRF1) Claim with the GCCF.¹⁵ The Claimant was assigned Claim ID # 9033888. The FRF1 was denied.¹⁶ Additionally, the Claimant filed a Full Review Final (FRF2) Claim with the GCCF.¹⁷ The Claimant was assigned Claim ID # 9130864. The FRF2 Claim was denied.¹⁸

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's mother and husband became ill and the Claimant was forced to take care of them, thereby reducing her working hours at Memorial Hospital. 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 N10036-1479 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 178930 (EAP1), 418123 (EAP2), 9489877 (ICQ32011), 9033888 (FRF1) and 9130864 (FRF2).

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 claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$12,990.00 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.

The Claimant asserted that due to the Deepwater Horizon oil spill, her mother and husband both became ill and both required hospitalization.¹⁹ The Claimant asserted that she was responsible for taking care of both her mother and husband as well as transporting both to their respective medical appointments.²⁰ As a result of these tasks, the Claimant stated she lost hours at her employment as a customer service representative at Memorial Hospital.²¹ The Claimant stated that her hours were reduced from eighty every two weeks to thirty to forty every two weeks and that this reduction lasted from April 2010-February 2011.²² The Claimant, however, failed to provide a connection between her purported loss of income and the effects of the Deepwater Horizon oil spill. Nowhere in the Claimant's submission to the NPFC does the Claimant assert

¹³ GCCF Claimant Status Page.

¹⁴ GCCF Denial Letter dated 24 September 2011.

¹⁵ GCCF Claimant Status Page.

¹⁶ GCCF Claimant Status Page.

¹⁷ GCCF Claimant Status Page.

¹⁸ GCCF Claimant Status Page.

¹⁹ Optional OSLTF Claim Form received 05 October 2011.

²⁰ Optional OSLTF Claim Form received 05 October 2011.

²¹ Optional OSLTF Claim Form received 05 October 2011 and PHONECON between the NPFC and the Claimant dated 18 October 2011.

²² PHONECON between the NPFC and the Claimant dated 18 October 2011.

any direct impact from the oil spill to her own loss of profits and impaired earnings capacity. Rather, the Claimant discussed the oil spill's impact on the health of her mother and husband.²³

Nevertheless, in the effort to verify the Claimant's submission, the NPFC contacted the Claimant to obtain additional information regarding the effect of the Deepwater Horizon oil spill on the Claimant's income from 2010-2011. In a subsequent phone conversation with the NPFC, the Claimant failed to articulate any direct impact between her loss of earnings and the oil spill outside of her already submitted information to the NPFC.²⁴ Thus, the Claimant's purported loss of income stems from her personal choice to forgo working at Memorial Hospital in order to care for her mother and husband.

The Claimant provided some medical record information for both her mother and her husband and based on the information available to the NPFC, it appears from the medical records that her 92 year old mother had been admitted for chest pain with no evidence that the medical condition was a result of the oil spill and her husband was admitted in March 2011 for colon surgery which also appears to be unrelated to the oil spill. Accordingly, the Claimant failed to prove a connection between her own loss of earnings and the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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 Review: *10/20/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

²³ The NPFC notes that although the Claimant states the oil spill impacted the health of both her mother and husband, the medical documentation provided in the Claimant's submission to the NPFC relates solely to the Claimant's mother.

²⁴ PHONECON between the NPFC and the Claimant dated 18 October 2011.