

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 6050

5890/DWHZ
03 November 2011

Robert K. Sheffield


Re: Claim Number: N10036-1483

Dear Mr. Sheffield:

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 N10036-1483 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 N10036-1483.

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	N10036-1483
Claimant	Robert Sheffield
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$21,600.00

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 12 October 2011, Robert Sheffield (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$21,600.00 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 was employed by Executive Protection Security Services (EPSS) as a security guard at Theodore Industrial Port in Theodore, Alabama.¹ The Claimant stated that Theodore Industrial Port was utilized as Alabama's largest staging area for BP's oil spill cleanup efforts.² Due to the increased activity at the port, BP directed EPSS to hire additional security guards; BP also hired additional security personnel themselves to supplement the work done by the EPSS guards.³ The Claimant asserted that, in July of 2010, BP bought out the contract for security services held by EPSS, laid off all the guards employed by EPSS, and brought in their own security company to manage the security force at the port.⁴ Consequently, the Claimant experienced a loss of income since he has been unemployed since his layoff from the port on 12 July 2010.⁵

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

¹ Letter of claim explanation from the Claimant to "whom it may concern," undated.

² Letter of claim explanation from the Claimant to "whom it may concern," undated.

³ Letter of claim explanation from the Claimant to "whom it may concern," undated.

⁴ Letter of claim explanation from the Claimant to "whom it may concern," undated.

⁵ Letter of claim explanation from the Claimant to "whom it may concern," undated.

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 his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, received 12 October 2011;
- Pay Stubs from Executive Protection Security Services for the periods: 20 March 2008-24 December 2008, 09 January 2009-23 December 2009, 22 January 2010-19 March 2010, 14 May 2010-06 August 2010;
- 2007 Form W-2 Wage and Tax Statement from Executive Protection Security Services;
- 2008 Form W-2 Wage and Tax Statement from Executive Protection Security Services;
- 2009 Form W-2 Wage and Tax Statement from Executive Protection Security Services;
- 2010 Form W-2 Wage and Tax Statement from Executive Protection Security Services;
- GCCF Denial Letter dated 29 November 2010;
- Letter from Executive Protection Security Services written by Edwin Alliston;
- Letter from Executive Protection Security Services written by Darryl Dukes;

- Letter from the GCCF indicating receipt of Interim or Final Payment claim, dated 29 January 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 21 September 2011;
- GCCF Interim Payment Claim Form, dated 02 October 2011;
- Letter of claim explanation from the Claimant to “whom it may concern,” undated;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 15 April 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 23 July 2011;
- TWIC Enrollment Receipt, dated 15 January 2009;
- TWIC Disclosure and Certification Form, dated 15 January 2009;
- Photocopies of the Claimant’s BP Contractor, APEC, and TWIC identification cards;
- Hand-written letter from Thomas Chance, undated; and
- Hand-written letter [with unreadable signature].

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of profits and impairment of earnings capacity.⁶ The Claimant was assigned Claimant ID # 3107008 and Claim # 161795. The EAP Claim was denied on 29 November 2010.⁷ Additionally, the Claimant filed an Interim Quarter I (ICQ12011) claim with the GCCF.⁸ The Claimant was assigned Claim ID # 9146759. The Interim I claim was denied on 23 July 2010.⁹ Lastly, the Claimant filed an Interim Quarter III (ICQ32011) with the GCCF.¹⁰ The Claimant was assigned Claim # 9485430. The Interim III claim was denied on 21 September 2011.¹¹

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant’s GCCF claims is the same as the subject matter of Claimant’s claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant was laid off from his position as a security guard by BP. 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 N10036-1483 considers and addresses the earnings claimed in the claims presented to the responsible party to the extent the damages were presented to the GCCF, specifically; GCCF Claim #’s 161795 (EAP), 9146759 (ICQ12011), 9485430 (ICQ32011).

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.

This claim is denied because the Claimant failed to prove that he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that, due to the Deepwater Horizon oil spill, EPSS had their contract for security services bought out by BP, which resulted in the Claimant being laid off from his position as a security guard.¹² The Claimant provided a letter from EPSS confirming the Claimant’s assertions that EPSS’s security services were discontinued after the Deepwater Horizon oil spill due to BP’s involvement at Theodore Industrial Port.¹³

⁶ GCCF Claimant Status.

⁷ GCCF Denial Letter, dated 29 November 2010.

⁸ GCCF Claimant Status.

⁹ GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 23 July 2011.

¹⁰ GCCF Claimant Status.

¹¹ GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 21 September 2011.

¹² Letter from the Claimant.

¹³ Letter from Executive Protection Security Services written by Edwin Alliston

The NPFC contacted Theodore Industrial Port to gain further clarification regarding the EPSS contract for security services and to determine a connection, if any, between the Deepwater Horizon oil spill and the Claimant's alleged loss. Theodore Industrial Port informed the NPFC that both the port and BP individually hired additional security personnel due to the increased activity at the port from its use as a staging area.¹⁴ However, the decision to discontinue the use of EPSS as a provider of personnel for security was not made by BP; the decision was made by Theodore Industrial Port itself.¹⁵ As the port ramped up its hiring of security personnel, it felt that EPSS was unable to provide guards that fit the standards they desired in a timely manner.¹⁶ The port began hiring security personnel on its own and, in the process, discovered that they could, and would prefer, to manage all security personnel in-house moving forward.¹⁷

Consequently, the Claimant failed to prove that his alleged loss was due to the Deepwater Horizon oil spill. Theodore Industrial Port made a business decision, preferring to manage their own security personnel rather than use an outside contractor; the determining factor being that the Port felt that it could perform those services as well, if not better, than EPSS.¹⁸ These considerations were completely separate and independent from any effects of the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant failed to meet the burden to demonstrate 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: *11/4/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁴ PHONECON between the NPFC and Theodore Industrial Port on 25 October 2011.

¹⁵ PHONECON between the NPFC and Theodore Industrial Port on 25 October 2011.

¹⁶ PHONECON between the NPFC and Theodore Industrial Port on 25 October 2011.

¹⁷ PHONECON between the NPFC and Theodore Industrial Port on 25 October 2011.

¹⁸ PHONECON between the NPFC and Theodore Industrial Port on 25 October 2011.