

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1485
Claimant	: Susanne Trabelssi
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 12 October 2011, Susanne Trabelssi (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$5,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant works as a server for a restaurant, Hattricks, in Tampa, Florida.¹ Prior to the Claimant's employment at Hattricks, the Claimant worked as a server at Gaspar's Patio Bar and Grille in Tampa, Florida.² The Claimant asserted that due to the Deepwater Horizon oil spill, her working hours were cut and went from working six days a week to three days a week, forcing her to switch jobs.³ As a result of the reduced hours and reduced days of work, the Claimant asserted she suffered reduced income.⁴

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$5,000.00.

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF for loss of profits and impairment of earnings capacity.⁵ The Claimant was assigned Claimant ID # 3537641 and Claim ID # 9438519. The ICQ32011 was denied on 30 September 2011.⁶

CLAIM DENIAL

The NPFC denied the claim on October 20, 2011 on the grounds that Claimant failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) that the

¹ Letter from the Claimant discussing her claim.

² Letter from the Claimant titled 'Gulf Coast Claims Work Release Statement' dated 16 August 2011 and signed by Gaspar's Patio Bar & Grille and PHONECON between the NPFC and Gaspar's Patio Bar & Grille dated 19 October 2011.

³ Letter from the Claimant discussing her claim.

⁴ Letter from the Claimant discussing her claim.

⁵ GCCF Claimant Status page.

⁶ GCCF Denial Letter dated 30 September 2011.

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. As noted above, Claimant asserted that due to the Deepwater Horizon oil spill, her working hours were reduced from six to three days a week and by extension she suffered reduced income.⁷ The Claimant, however, failed to provide a connection between her alleged losses with the Deepwater Horizon oil spill. In support of her claim, the Claimant included a letter signed by a Manager at Gaspar's Patio Bar & Grille.⁸

The NPFC contacted Gaspar's Patio Bar & Grille to obtain information regarding the Claimant's employment as well as the effect of the Deepwater Horizon oil spill on her employment. In a conversation with Gaspar's, the NPFC was informed that the Claimant left her employment at Gaspar's for another job opportunity in the Tampa, Florida region before the Deepwater Horizon oil spill occurred.⁹ Further, the Manager informed the NPFC that the letter was not signed to provide verification of a loss of hours due to the Deepwater Horizon oil spill, but because the Claimant needed verification of her employment at Gaspar's for a claim filed with the RP/GCCF.¹⁰ Thus, the Claimant failed to prove a connection between the Deepwater Horizon oil spill and her purported loss of working hours.

Additionally, the NPFC obtained statistics provided by the Tampa Bay Chamber of Commerce that do not support the assertion that tourism substantially decreased in this region after the Deepwater Horizon oil spill.¹¹ Rather, the Tampa hotel occupancy levels followed the same trend line seen from 2006-2009, where peak occupancy levels out in March, decline in April and again in May, before increasing again from June-August.¹² In fact, in 2010 the hotel occupancy levels in August 2010 rose from levels in July 2010 despite seeing a decline from July to August in 2006-2009.¹³

Furthermore, the Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. Included in the Claimant's submission to the NPFC was information regarding the Claimant's wages from 2008-2010.¹⁴ Examining the Claimant's financial information showed that the Claimant earned more in 2010 (\$14,065.00)¹⁵ than she did in 2009 (\$11,432.00)¹⁶ or 2008 (\$7,503.00)¹⁷. Thus, the Claimant earned more income in 2010, the period purportedly affected by the oil spill, than the non-oil spill affected years in 2008 and 2009. Accordingly, the Claimant failed to prove that the Deepwater Horizon oil spill caused her to suffer a financial loss.

⁷ Letter from the Claimant discussing her claim.

⁸ Letter from the Claimant titled 'Gulf Coast Claims Work Release Statement' dated 16 August 2011 and signed by Gaspar's Patio Bar & Grille.

⁹ PHONECON between the NPFC and Gaspar's Patio Bar & Grille dated 19 October 2011.

¹⁰ PHONECON between the NPFC and Gaspar's Patio Bar & Grille dated 19 October 2011.

¹¹ <http://www.visittampabay.com/includes/media/docs/2010-Research-Presentation-Updated.pdf> (last accessed 19 October 2011).

¹² <http://www.visittampabay.com/includes/media/docs/2010-Research-Presentation-Updated.pdf>, page 32 (last accessed 19 October 2011).

¹³ <http://www.visittampabay.com/includes/media/docs/2010-Research-Presentation-Updated.pdf>, page 32 (last accessed 19 October 2011).

¹⁴ Internal Revenue Service Wage and Income Transcript for Tax Period December 2008, Internal Revenue Service Wage and Income Transcript for Tax Period December 2009, Internal Revenue Service Wage and Income Transcript for Tax Period December 2010.

¹⁵ Internal Revenue Service Wage and Income Transcript for Tax Period December 2010.

¹⁶ Internal Revenue Service Wage and Income Transcript for Tax Period December 2009.

¹⁷ Internal Revenue Service Wage and Income Transcript for Tax Period December 2008.

CLAIMANT'S REQUEST and SUPPORT FOR RECONSIDERATION :

On October 28, 2011, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim. The Claimant provided a one paragraph typed letter along with a copy of three letters: one from her current employer (Hatricks), one from her previous employer (Gaspar's Patio Bar and Grille), and one from Centro Cantina which the NPFC assumes was a previous employer. Claimant failed to provide details for the Centro Cantina employment such as the start and stop dates and her position. She also included a copy of a news article entitled "Economic Fallout from BP oil spill will haunt Florida for years, reports say", and a copy of a Google map for Hatricks.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration, including all information presented by the Claimant.

While the Claimant produced three letters in support of her request for reconsideration, the letter from Gaspar's confirms the Claimant's employment with them in 2010 but provides no other support for the Claimant's alleged losses. As noted above, during the initial adjudication of the Claimant's submission, the NPFC spoke with Ms. Davidson of Gaspar's who confirmed the Claimant left her employment at Gaspar's PRIOR to the Deepwater Horizon oil spill incident; therefore, her reduced hours and departure from this job is not due to the Deepwater Horizon oil spill incident.

The Claimant's letter from Centro Cantina indicates the business experienced a decline due to the Deepwater Horizon oil spill and that the Claimant experienced reduced hours and eventually left its employ; however, neither the Claimant nor the letter addresses the time period when the Claimant worked for Centro Cantina nor did the employer provide any supporting documentation of alleged losses from the Deepwater Horizon oil spill.

The Claimant's letter from her current employer, Hatricks, confirms that the Claimant is employed at Hatricks and due to a slow season, the Claimant experienced reduced hours. Neither the Claimant nor the employer provided additional financial or business documentation that would demonstrate any reduced business for Hatricks was a result of the Deepwater Horizon oil spill. A slow season during the same time period of the Deepwater Horizon oil spill incident does not automatically mean the incident caused the business losses. Without further business information; the NPFC is unable to determine whether the employer can link reduced business to the Deepwater Horizon oil spill incident.

Finally, the NPFC originally denied the claim in part because the Claimant's income in 2010 was greater than in 2008 or 2009. Claimant failed to address this deficiency or to demonstrate that she experienced a loss at all for 2010.

Based on some of the information being updated but duplicative of information originally provided and the other information failing to prove a loss or its causation was due to the Deepwater Horizon oil spill, the NPFC has determined that the Claimant has again failed to demonstrate (1) that she suffered a loss, and (2) that her alleged loss was 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.

This claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *11/2/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
11/02/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6180

Susanne Trabelssi



RE: Claim Number: N10036-1485

Dear Ms. Trabelssi:

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 N10036-1485 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form