

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7453

5890/DWHZ
Claim # N10036-1490
28 November 2011

Chris Hawthorne
[REDACTED]

Dear Mr. Hawthorne:

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 the claim number N10036-1490 involving Deepwater Horizon. Please see the attached 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 N10036-1490.

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	N10036-1490
Claimant	Chris Hawthorne
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings 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 13 October 2011, Chris Hawthorne (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked as a Material Handler at Goodwill Industries of South Mississippi in Gulfport, Mississippi at the time of the oil spill.¹ Goodwill states that the Claimant was let go on 15 May 2010.² Based on his 2010 W-2s, the Claimant worked for other employers after he was let go by Goodwill Industries. The Claimant states he lost earnings due to the Deepwater Horizon oil spill.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

¹ Letter from Goodwill Industries of South Mississippi in Gulfport, MS, dated 15 May 2010 concerning Claimant's employment

² Letter from Goodwill Industries of South Mississippi in Gulfport, MS, dated 15 May 2010 concerning Claimant's employment

³ OSLTF Claim Form signed by the Claimant 22 September 2011

to 33 C.F.R. § 136.231 is a 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 this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claimant 22 September 2011
- Letter from Goodwill Industries of South Mississippi in Gulfport, MS, dated 15 May 2010 concerning Claimant's employment
- 2009 W-2 from EB Distributing Co
- 2009 and 2010 W-2s from Goodwill Industries South Mississippi

- 2009 and 2010 W-2s from United Site Services, Inc
- 2010 W-2 from Knight's Marine & Industrial Services
- 2010 W-2 from Command Center , Inc
- 2010 W-2 from W. G. Yates & Sons Construction Co
- 2009 W-2 from Drivers Management LLC
- IRS Wage and Income Transcript for December 2008
- 2009 and 2010 Form 1040 US Individual Income Tax Returns
- Pay stubs from Goodwill Industries South Mississippi January through May 2010
- Pay stub from W.G. Yates & Sons Construction Co September 2010
- Pay stubs from UTI Integrated Logistics for November and December 2010

On 18 October 2011, the NPFC sent the Claimant a certified letter requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. US Postal Service Tracking shows the certified letter was delivered 22 October 2011.⁴

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 29 September 2010 in the amount of \$14,400.00.⁵ The claim was assigned Claimant ID #3048270 and claim #102178.⁶ The EAP claim was denied on 12 November 2010.⁷ Additionally, Claimant filed a Final Payment (FP) claim with the GCCF on 04 January 2011.⁸ The claim was assigned claim #9136078. The FP claim was denied on 02 August 2011.⁹

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the GCCF claims to be properly presented to the Responsible Party. To the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1490 considers and addresses the loss of earnings up to the amount of \$5,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #102178 EAP and #9136078 FP.

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.

⁴ USPS Tracking Receipt 7011 1150 0000 4666 6488 shows lettered delivered 22 October 2011 to Gulfport, Mississippi.

⁵ Report from the GCCF dated 21 November 2011

⁶ GCCF On-Line Claim Status Report

⁷ GCCF Denial Letter dated 12 November 2010

⁸ Report from the GCCF dated 21 November 2011

⁹ GCCF Denial Letter dated 02 August 2011

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 Claimant provided insufficient documentation to show a loss of earnings and that the loss was due to the Deepwater Horizon oil spill. The NPFC sent a certified letter to the Claimant requesting additional information in order to further reevaluate his claim.¹⁰ The Claimant did not respond to the request. USPS Tracking shows the letter was delivered to the Claimant.¹¹ The Claimant states that, after he was let go at Goodwill Industries, he lost earnings in 2010. However, his individual income tax returns show that he earned more in wages in 2010 than 2009.¹² His W-2's for 2010 show that the Claimant mitigated his alleged damages and found other work.¹³

This claim is denied because the Claimant failed to meet the 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: *Claims Adjudication Division*

Date of Supervisor's Review: *11/28/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁰ Letter from NPFC to the Claimant dated 18 October 2011 requesting additional information on the claim

¹¹ USPS Tracking Receipt 7011 1150 0000 4666 6488 shows lettered delivered 22 October 2011 to Gulfport, Mississippi.

¹² Wages on the 2010 Income Tax Return was \$20,015 and the wages the 2009 Return was \$10,865

¹³ See 2010 W-2s from Knight's Marine & Industrial Services, Command Center , Inc, W. G. Yates & Sons Construction Co and Drivers Management LLC