

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 7590

5890/DWHZ
17 November 2011

Tammy Gail Rouse



Re: Claim Number: N10036-1493

Dear Ms. Rouse:

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 N10036-1493 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 N10036-1493.

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	N10036-1493
Claimant	Tammy Rouse
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,384.60

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 18 October 2011, Tammy Rouse (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$15,384.60 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant was employed as a salesperson by Allport Services, LLC in Port Fourchon, Louisiana.¹ Allport Services provides support services for the oil and gas industries.² The Claimant asserted that, due to the Deepwater Horizon oil spill, she was laid off from her job at Allport Services LLC, which resulted in a loss of income.³

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.

¹ Letter from Allport Services, LLC to "Whom It May Concern," dated 7 July 2011.

² PHONECON between the NPFC and Allport Services on 31 October 2011.

³ Optional OSLTF Claim Form, received 17 October 2011.

- (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

In support of the claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, received 17 October 2011;
- Denial Letter on Interim Payment/Final Payment Claim, dated 12 August 2011;
- Letter from the GCCF to the Claimant regarding photocopies of submitted documentation, dated 11 May 2011;
- Letter from Allport Services, LLC to "Whom It May Concern," dated 7 July 2011;
- Paystubs from Allport Services for the periods 25 February 2010 through 30 June 2010;
- 2009 Form 1040A U.S. Individual Income Tax Return;
- 2010 Form W-2 Wage and Tax Statement from Allport Services, LLC; and
- GCCF Claim Form Generated Online.

Claimant's Submission to the GCCF

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on 19 October 2010 in the amount of \$12,000.00.⁴ She was assigned Claimant ID # 1107231 and Claim # 283911. The EAP claim was denied by the GCCF on 25 October 2010.⁵ Additionally, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 10 November 2010

⁴ Report from the GCCF, dated 02 November 2011.

⁵ GCCF Denial Letter, dated 25 October 2010.

in the amount of \$36,000.00.⁶ The claim was assigned Claim # 9012931. The FRF claim was denied by the GCCF on 15 April 2011.⁷

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 her claim before the NPFC, i.e., that she lost her job at Allport Services, LLC as a result of the Deepwater Horizon oil spill. The NPFC deems that the Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1493 considers and addresses the earnings claimed in both claims presented to the responsible party, specifically; GCCF Claim #'s 283911 (EAP) and 9012931 (FRF).

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 she suffered a loss due to the Deepwater Horizon oil spill. The Claimant asserted that she was laid off from her position at Allport Services due to the Deepwater Horizon oil spill. In her submission to the NPFC, the Claimant provided a letter from Allport Services confirming that she was laid off on 07 July 2010 due to a lack of business caused by the Deepwater Horizon oil spill and the subsequent drilling moratorium.⁸ The NPFC contacted Allport Services to verify the authenticity of the letter provided to the NPFC and to gain additional information regarding how the company was affected by the Deepwater Horizon oil spill. Allport Services confirmed writing the letter on the Claimant's behalf, as well as confirming that the company laid off several employees due to the oil spill.⁹ When asked to specify exactly how the oil spill reduced business at Allport Services, the NPFC was informed by Allport that the moratorium on drilling and lack of permitting caused the company's loss.¹⁰ Consequently, the Claimant failed to prove that her alleged loss was a result of the Deepwater Horizon oil spill.

Additionally, it is important to note that the Claimant has not provided sufficient financial documentation in support of her alleged loss pursuant to 33 CFR 136.233 which states in relevant part, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

Based on the foregoing, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was a loss in the amount claimed, and (2) that the alleged loss is due to the

⁶ Report from the GCCF, dated 02 November 2011.

⁷ Denial Letter on Interim Payment/Final Payment Claim, dated 15 April 2011.

⁸ Letter from Allport Services, LLC to "Whom It May Concern," dated 7 July 2011.

⁹ PHONECON between the NPFC and Allport Services, LLC on 31 October 2011.

¹⁰ PHONECON between the NPFC and Allport Services, LLC on 31 October 2011.

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: *11/17/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: