

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5565

5890/DWHZ
28 November 2011

Mr. Raymond D. Carrizales



Re: Claim Number: N10036-1499

Dear Mr. Carrizales:

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 N10036-1499 involving the Deepwater Horizon oil spill. 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 N10036-1499.

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	N10036-1499
Claimant	Mr. Raymond Carrizales
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$2,599.75

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 13 October 2011, Mr. Raymond Carrizales (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$2,599.75 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant was hired to work as a shrimp processor at Tex Mex Cold Storage in Brownsville, TX on 16 August 2010.² The Claimant was let go on 29 March 2011, allegedly as a result of the Deepwater Horizon oil spill.³ The Claimant alleged that “due to the oil spill, [the Claimant’s] hours at were cut and finally [the Claimant] lost [his] job.”⁴

The Claimant alleged to have sustained a loss of income in the amount of \$2,599.75 due to the loss of his position.⁵

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 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.

¹ Optional OSLTF Claim Form, dated 19 September 2011.

² PHONECON: NPFC Staff and Human Resources representative, Tex Mex Cold Storage, 19 October 2011.

³ PHONECON: NPFC Staff and Human Resources representative, Tex Mex Cold Storage, 19 October 2011.

⁴ Optional OSLTF Claim Form, dated 30 September 2011.

⁵ Optional OSLTF Claim Form, dated 30 September 2011.

- (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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 13 October 2011;
- GCCF Expiration of Re-Review Option for Determination Letter on Interim Payment/Final Payment Claim, 7 September 2011;
- Tex Mex Cold Storage, Inc., Payroll Transaction Detail, January – March 2011;
- Fax Cover Sheet, undated;
- NPFC request for additional information, annotated by the Claimant;
- Letter from the Claimant's employer regarding the reasons for the Claimant's lay off, 8 November 2011;
- GCCF Loss Calculation page;
- 2010 Form 1040EZ;
- Tex Mex Cold Storage, Inc., Payroll Transaction Detail, January – March 2011.

On 16 July 2011, the Claimant submitted a Full Review Final (FRF) Claim to the RP/GCCF, seeking loss of profits and earning damages in the amount of \$4,939.00.⁶ The Claimant was assigned claimant ID 3491268, and the FRF claim was assigned claim # 9240338. The GCCF issued a determination on this claim, in which they found that the Claimant did not sustain a loss in the months following the Deepwater Horizon oil spill.⁷

On 9 November 2011, the Claimant presented this claim to the NPFC, seeking \$2,599.75 in loss of profits damages. Because this claim has been first presented to the RP/GCCF in an amount greater

⁶ GCCF United States Coast Guard Report, 21 November 2011.

⁷ GCCF United States Coast Guard Report, 21 November 2011.

than the amount now before the NPFC, OPA's claim presentment requirements have been met, and the NPFC may properly adjudicate this claim in its entirety.⁸

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, 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 this claim.

This claim is denied because the Claimant has failed to demonstrate that he sustained an actual financial loss as a result of the Deepwater Horizon oil spill.

According to a letter provided by the owner of the Claimant's former place of employment, the employer "offers seasonal jobs."⁹ The employer indicated that the season "picks up in the month of August" and "starts to slow down in the month of February."¹⁰ The Claimant was hired in August of 2010 and let go in March of 2011.¹¹ Therefore, it appears that the Claimant was hired for the 2010 season and was let go at the end of the season. The Claimant has not provided documentation that would indicate that the Claimant was let go in March of 2011 due to the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill, and not because of the seasonal nature of the Claimant's employment.

Should the Claimant chose to pursue this claim on reconsideration, the Claimant must provide documentation to show that the Claimant was not hired to a seasonal position, but that he would have been a year-round employee had the oil spill not occurred. Alternatively, the Claimant must show how his seasonal work was affected by the Deepwater Horizon oil spill. Furthermore, as indicated in the NPFC's request for additional information, the Claimant should provide documentation to show how his former employer was affected by the Deepwater Horizon oil spill, and that the oil spill continued to affect the company into the 2011 season, when the Claimant was let go.¹²

This claim is denied because the Claimant has not demonstrated that the losses the Claimant alleged to have incurred were 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ 33 C.F.R. 136.103(a).

⁹ Letter from the Claimant's employer regarding the Claimant's loss of employment, 8 November 2011.

¹⁰ Letter from the Claimant's employer regarding the Claimant's loss of employment, 8 November 2011.

¹¹ PHONECON: NPFC Staff and Human Resources representative, Tex Mex Cold Storage, 19 October 2011.

¹² NPFC Request for Additional Information, dated 25 October 2011. The Claimant responded to the letter on 9 November 2011, but failed to respond to these particular requests.