

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7170

5890/DWHZ
Claim # N10036-1504
07 November 2011

Barbara Fletcher
[REDACTED]

Dear Ms. Fletcher:

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 N10036-1504 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 N10036-1504.

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	N10036-1504
Claimant	Barbara Fletcher
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

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 17 October 2011, Barbara Fletcher (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,000.00 for loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

The Claimant is an employee of the Mississippi Department of Human Resources, Economic Assistance.¹ She lives in Coahoma, Mississippi, which is in the northwest corner of the state. She began a second job with Marcheal's Day Care in West Helen, Arkansas, in January 2011.² The Claimant's stated that due to the oil spill, she pays more for gasoline for her car, butane for home heating, and groceries at the supermarket.³

The claim includes \$5,000.00 for damages to Natural Resources.⁴ The Claimant stated later that she had no loss of Natural Resources.⁵ She was referring to the cost of gasoline for her car and butane for her home heating. Based on the Claimant's clarification, the NPFC has reclassified this entire claim as a loss of profits and impairment of earnings claim.

¹ Copies of employee ID from Mississippi Department of Human Services, Economic Assistance

² Handwritten letter from Claimant dated 31 October 2011 in response to NPFC letter requesting additional information

³ OSLTF Claim Form signed by Claimant and dated 07 October 2011 and handwritten letter from Claimant dated 31 October 2011 in response to NPFC letter requesting additional information

⁴ OSLTF Claim Form signed by Claimant and dated 07 October 2011

⁵ Handwritten letter from Claimant dated 31 October 2011 in response to NPFC letter requesting additional information

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 Section 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.
- (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 Claimant and dated 07 October 2011
- W-2 Wage and Tax Statements for 2008, 2009 and 2010
- Handwritten letter from Claimant dated 07 October 2011 explaining her claim
- Pay stubs from Marchael's Day Care for pay periods in 2011
- Copies of employee ID from Mississippi Department of Human Services, Economic Assistance
- Copy of Mississippi drivers license
- Handwritten letter from Claimant dated 31 October 2011 in response to NPFC letter requesting additional information

On 19 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 31 October 2011, the Claimant responded to the request.

Before presenting this claim to the NPFC, the Claimant filed an Interim Claim (ICQ32011) the GCCF. The claim was assigned Claimant ID #3548922 and claim #9504167.⁶ The Interim claim was denied on 23 September 2011.⁷ Additionally, Claimant filed a Final Payment (FP) claim with the GCCF. The claim was assigned claim #9487956.⁸ The FP claim was denied on 07 October 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 has not been able to confirm the amount of either the Interim or Final claims as of the date of this determination. 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 N10036-1504 considers and addresses the loss of earnings up to the amount of \$10,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #9504167 ICQ32011 and #9487956 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

⁶ GCCF On-Line Claim Status Report

⁷ GCCF Denial Letter dated 23 September 2011

⁸ GCCF On-Line Claim Status Report

⁹ GCCF Denial Letter dated 07 October 2011

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.

The documentation that the Claimant provided shows little loss of income for 2010. The Claimant is an employee of the State of Mississippi.¹⁰ Her W-2 for 2010 from the State of Mississippi shows she earned almost as much in 2010 as she did in 2008 and 2009.¹¹ The Claimant states that the reason her earnings were less in 2010 was that Mississippi cut wages in 2010 by furloughing employees.¹²

The Claimant states she pays more for gasoline for her car, butane for home heating and groceries at the supermarket.¹³ It is important to note that the NPFC has determined that the increase in prices as alleged by the Claimant does not represent a loss of earnings. The Claimant lives in Coahoma, Mississippi. However, the Claimant did not explain how Coahoma, which is located in the northwest corner of Mississippi, was affected by an oil spill in the Gulf. The Claimant stated that all of Mississippi was affected by the oil spill.¹⁴

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: *07 November 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁰ Copies of employee ID from Mississippi Department of Human Services, Economic Assistance

¹¹ Wages on W-2 Wage and Tax Statements show : \$27,128.59 for 2008, \$27,128.76 for 2009 and \$27,011.00 for 2010

¹² Handwritten letter from Claimant dated 31 October 2011 in response to NPFC letter requesting additional information

¹³ OSLTF Claim Form signed by Claimant and dated 07 October 2011 and handwritten letter from Claimant dated 31 October 2011 in response to NPFC letter requesting additional information

¹⁴ Handwritten letter from Claimant dated 31 October 2011 in response to NPFC letter requesting additional information