

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 7392

5890/DWHZ
Claim # N10036-1511
22November 2011

Delores D. Myers
[REDACTED]

Dear Ms. Myers:

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 N10036-1511 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 N10036-1511.

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	N10036-1511
Claimant	Delores Meyers
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,000.00

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 05 October 2011, Delores Meyers (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant states that she lost wages due to a loss of patients. Few details are available about her claim. The Claimant provided only a completed OSLTF Claim Form with her claim submission. She did not respond to the NPFC’s letter of 20 October 2011 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:

- Optional OSLTF Claim Form signed by the Claimant 03 October 2011

On 20 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent First-Class Certified Mail. US Postal Tracking shows the letter was delivered to the Claimant.¹

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 04 October 2010 in the amount of \$8,000.00.² The claim was assigned Claimant ID #3091598 and claim #145986.³ The EAP claim was

¹ USPS Tracking Receipt Number 7011 1570 0001 4802 6791 shows letter delivered to Gulfport, Mississippi on 20 October 2011.

² Report from the GCCF dated 02 November 2011

³ GCCF On-Line Claim State Report

denied on 28 October 2010.⁴ Additionally, Claimant filed a Final Payment (FP) claim with the GCCF on 12 January 2011 in the amount of \$10,500.00.⁵ The claim was assigned claim #9208003. The FP claim was denied on 16 April 2011.⁶

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 N10036-1511 considers and addresses the loss of earnings up to the amount of \$8,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #145986 EAP and #9208003 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. 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 has provided insufficient documentation to support the amount of the loss alleged and the Claimant has failed to demonstrate that the loss resulted from the Deepwater Horizon oil spill. The NPFC sent the Claimant a certified letter on 20 October 2011 requesting further information to further evaluate her claim.⁷ The Claimant did not respond to the letter. USPS Tracking shows the letter was delivered 27 October 2011.⁸ The only submission to the NPFC is the Claimant's assertion that she has lost patients due to the oil spill and the amount claimed.⁹ The evidence submitted does not support the alleged loss nor connect her alleged loss to the oil spill. Furthermore, the Claimant has failed to provide comparable financial documentation such as pay stubs, bank statements, and income tax returns for 2008 – 2010. Should the Claimant decide to request reconsideration, she will need to respond to the request for additional information and provide all comparable financial document pursuant to the governing claims regulations.

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

⁴ GCCF Denial Letter dated 28 October 2011

⁵ Report from the GCCF dated 02 November 2011

⁶ GCCF Denial Letter dated 16 April 2011

⁷ NPFC letter for additional information dated 20 October 2011

⁸ USPS Tracking Receipt Number 7011 1570 0001 4802 6791 shows letter delivered to Gulfport, Mississippi on 20 October 2011.

⁹ Optional OSLTF claim form dated 03 October 2011

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: *22 November 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments: