

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 7088

5890/DWHZ
3 November 2011

Valentina Mishku


Re: Claim Number: N10036-1515

Dear Ms. Mishku:

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 N10036-1515 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 N10036-1515.

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 N10036-1515
Claimant Valentina Nishku
Type of Claimant Private (US)
Type of Claim Loss of Profits and Impairment of Earnings Capacity
Amount Requested \$30,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 20 October 2011, Valentina Nishku (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$30,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was unemployed and seeking employment in the Palm Harbor, Florida region.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, she was unable to secure employment despite an active job search.² As a result of not being able to obtain work, the Claimant suffered reduced income in 2010.³

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$30,000.00.

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.
- (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 received 20 October 2011.

² Optional OSLTF Claim Form received 20 October 2011.

³ Optional OSLTF Claim Form received 20 October 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 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 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

The Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form received 20 October 2011;
- GCCF Denial Letter dated 30 September 2011;
- Document containing list of jobs the Claimant applied for;
- Agency for Workforce Innovation, Unemployment Compensation, Benefit Records for period 14 February 2010-27 February 2010.

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim Payment Claim Quarter III 2011 (ICQ32011) with the GCCF.⁴ The Claimant was assigned Claimant ID # 3548663 and Claim ID # 9500473. The ICQ32011 was denied on 30 September 2011.⁵

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of Claimant's claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant was unable to obtain employment. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1515 considers and addresses the earnings claimed in the claim presented to the responsible party specifically; GCCF Claim # 9500473 (ICQ32011).

⁴ GCCF Claimant Status page.

⁵ GCCF Denial Letter dated 30 September 2011.

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.

The claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$30,000.00 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.

The Claimant asserted that she has been unable to obtain employment due to the depressed economy caused by the Deepwater Horizon oil spill.⁶ The Claimant, however, failed to articulate any specific injury caused by the Deepwater Horizon oil spill; rather, the Claimant stated that, “[f]inding a job in these conditions was much harder, I was unable to find work because oil spill [sic] significantly affected the economy.”⁷ Although the Claimant asserted damage to the economy in general, she failed to allege, and/or provide evidence of, any particular loss or failed job opportunity that she personally experienced that was a result of the Deepwater Horizon oil spill. Accordingly, the Claimant provided nothing to indicate her alleged loss was due to the Deepwater Horizon oil spill as opposed to other factors, such as the previously struggling Florida economy.

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

Date of Review: *11/3/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Optional OSLTF Claim form received 20 October 2011.

⁷ Optional OSLTF Claim form received 20 October 2011.