

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 0470 0000 8895 8163

5890/DWHZ
23 January 2012

Anthony Pleasant
[REDACTED]

Re: Claim Number: N10036-1526

Dear Mr. Pleasant:

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 N10036-1526 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 N10036-1526.

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	N10036-1526
Claimant	Anthony Pleasant
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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 October 2011, Anthony Pleasant, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$10,000.00 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 worked as a laborer for Waste Tire Disposable.¹ Waste Tire Disposable is a business based in Saucier, Mississippi that picks up tires from automotive companies and transports those tires for disposal.² The Claimant asserted that, due to the Deepwater Horizon oil spill, he suffered reduced working hours and eventually lost his job resulting 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).

¹ Handwritten document titled "Work History";

² PHONECON between the NPFC and Waste Tire Disposable on 17 January 2012.

³ Optional OSLTF Claim Form signed 11 October 2011 and received 25 October 2011.

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.
- (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 his claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form received 25 October 2011;
- 2010 Form W-2 Wage and Tax Statement from W.G. Yates & Sons Construction Company;
- 2010 Form W-2 Wage and Tax Statement from Command Center, Inc.;
- 2010 Form W-2 Wage and Tax Statement from TEG Staffing, Inc.;
- Hand-written letter from the Claimant dated 11 October 2011;
- Pay stub from W.G. Yates & Sons Construction Company dated 31 August 2010;
- Copy of the Claimant's Mississippi Driver License;
- Copy of the Claimant's Social Security card;
- Pay stubs from Command Center, Inc. for the period 24 May 2010-06 June 2010;
- Handwritten document titled "Work History";
- 2007 Federal Tax Return Transcript;

- 2008 Federal Wage and Income Transcript; and
- 2010 Federal Tax Return Transcript.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Months Claim with the GCCF for loss of profits and impairment of earnings capacity on 28 September 2010 in the amount of \$20,400.00.⁴ The Claimant was assigned Claimant ID # 3044912 and Claim ID # 98588. The EAP Claim was denied on 28 October 2010.⁵ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 28 September 2010 in the amount of \$20,400.00.⁶ The Claimant was assigned Claim ID # 9074948. The FRF Claim was denied on 06 May 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant's work hours were reduced and he eventually lost his job. The NPFC deems the Claimant's denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1526 considers and addresses the earnings claimed in the Claimant's claim as presented to the responsible party up to \$10,000.00, specifically; GCCF Claim #'s 98588 (EAP) and 9074948 (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 that he experienced a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that, due to the Deepwater Horizon oil spill, he suffered reduced working hours and was eventually laid off.⁸ The Claimant, however, failed to provide the NPFC with sufficient documentation to connect his alleged loss to the Deepwater Horizon oil spill. On 09 November 2011, the NPFC requested that the Claimant provide, among other things, all paystubs and tax documentation from his employment, as well as his bank statements to verify his financial loss. The Claimant failed to provide his bank statements and attested that he was paid in cash by Waste Tire Disposable and thus had no paystubs or other verifiable evidence.⁹ Consequently, the NPFC is unable to verify the exact dates of the Claimant's employment at Waste Tire; the amounts earned by the Claimant, or calculate the exact loss in earnings allegedly caused by the Deepwater Horizon oil spill.

Furthermore, the NPFC contacted Waste Tire Disposable to verify the claims as asserted by the Claimant. Waste Tire verified the Claimant's employment, as well as the Claimant's reduced hours caused by the Deepwater Horizon oil spill.¹⁰ However, when asked by the NPFC to describe exactly how the company's loss was caused by the oil spill, the only explanation provided by Waste Tire was that there

⁴ Report from the GCCF dated 23 December 2011.

⁵ GCCF Denial Letter dated 28 October 2010.

⁶ Report from the GCCF dated 23 December 2011.

⁷ GCCF Denial Letter dated 06 May 2011.

⁸ Hand-written letter from the Claimant dated 11 October 2011.

⁹ PHONECON between the NPFC and the Claimant on 17 January 2012.

¹⁰ PHONECON between the NPFC and Waste Tire Disposable on 17 January 2012.

were fewer tires for pick-up.¹¹ Consequently, the Claimant has failed to prove any evidence linking his alleged loss to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his 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: *1/23/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹¹ PHONECON between the NPFC and Waste Tire Disposable on 17 January 2012.