

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1533
Claimant	: David Ronald Dudley
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$20,000.00

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 31 October 2011, Mr. David Dudley (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$20,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a poker dealer at The Pensacola Greyhound Track (the Track), where he had begun working when the poker room first opened, in late January of 2010.² The Claimant alleged that because of the oil spill, his “work hours and income (mostly derived from tips) were reduced due to tourism reduction” in Pensacola.³

In 2008 and 2009, the Claimant worked as a poker dealer in other casinos, where he earned approximately \$30,000.00 per year.⁴ In 2010, the Claimant earned approximately \$20,000.00. Therefore, the Claimant alleged to have lost \$10,000.00 in income in 2010, but seeks a total of “\$20,000.00 as full and final settlement of all of the claims . . . against BP in connection with the oil spill incident of April 20, 2010.”⁵

Prior to presentment to the NPFC, the Claimant presented two Emergency Advance Payment (EAP1) (EAP2) claims to the RP/GCCF.⁶ The Claimant was assigned Claimant ID 1016079. The EAP1 claim alleged loss of earnings or profits damages and was assigned claim # 3007516. The EAP2 claim alleged loss of subsistence use of natural resources damages and was assigned claim # 3007517.⁷ The EAP1 claim was denied on 2 November 2010, and the EAP2 claim was denied on 20 October 2010.⁸

The Claimant then presented a Second Quarter Interim Claim (ICQ22011) and Third Quarter Interim Claim (ICQ32011) to the RP/GCCF. The ICQ22011 was assigned claim # 9366140 and the ICQ32011

¹ Optional OSLTF Claim Form, dated 3 August 2011.

² Moon, Troy, *Pensacola Greyhound Track Opens New Poker Facility*, *nwfdailynews.com*, 28 January 2010.

³ Optional OSLTF Claim Form, dated 20 October 2011.

⁴ Affidavit of David R. Dudley In Support of His Claim Against BP, 21 April 2011; 2008 Form 1040, showing wages of \$28,971.00; 2009 Form 1040, showing wages of \$30,053.00.

⁵ Affidavit of David R. Dudley In Support of His Claim Against BP, 21 April 2011.

⁶ GCCF Claimant Status, accessed on 3 November 2011.

⁷ GCCF Claimant Status, accessed on 3 November 2011.

⁸ GCCF Claimant Status, accessed on 3 November 2011.

was assigned claim # 9410460. Both claims sought loss of profits damages, and were denied on 28 May 2011 and 20 July 2011.⁹

On 31 October 2011, the Claimant presented this claim to the NPFC, seeking \$20,000.00¹⁰ in loss of profits damages resulting from the Deepwater Horizon oil spill. The NPFC may adjudicate this claim to the extent that these damages were first presented to and denied by the RP/GCCF.¹¹ Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.

The NPFC contacted the Claimant, requesting additional information, including copies of pay stubs to demonstrate the Claimant's pre and post-oil spill income.¹² The NPFC requested that the Claimant respond within 14 days of the date of the letter, which was dated 4 November 2011. The NPFC did not receive a response from the Claimant. Therefore, based on the information that was currently before the NPFC, the NPFC did not have sufficient evidence to verify that the Claimant sustained an actual loss of profits as a result of the Deepwater Horizon oil spill.

The NPFC denied the claim originally on December 5, 2011 on the grounds that the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$20,000.00, 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.

REQUEST FOR RECONSIDERATION:

On January 30, 2012, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant sent a letter and one pay stub for pay period ending January 8, 2012 from Boomtown Casino in Biloxi, MS. It is important to note that the NPFC did receive a pay history report for the Claimant from January 2010 through February 2011 while employed with Pensacola Greyhound Track although that information was not received by the NPFC until December 7, 2011 which was two days after the NPFC issued its initial denial. The Claimant states on reconsideration that he is amending his loss figure to \$10,000.00 vice the \$20,000.00 he originally asserted in his initial submission.

The Claimant argues that the documentation he has previously provided demonstrates a reduced income while employed by Pensacola Greyhound Track which was during the same time as the Deepwater Horizon oil spill. The Claimant also states that his income while at Pensacola Greyhound Track is also lower than his reported income he has made historically in the same career field prior to the oil spill and after the oil spill when considering the new pay stub provided from his 2012 earnings at Boomtown Casino.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The original denial dated December 5, 2011 is incorporated into this determination on reconsideration.

⁹ GCCF Claimant Status, accessed on 3 November 2011.

¹⁰ Claimant calculated his actual losses at \$10,000 and doubled this figure to reach his sum certain of \$20,000.

¹¹ 33 C.F.R. 136.103(a).

¹² NPFC request for additional information, 4 November 2011.

Upon review of all of the Claimant's information, the Claimant did not produce documentation that would persuade the NPFC to change its original denial determination. While the Claimant produced a history summary report of his pay and time while employed at Pensacola Greyhound Track and then one pay stub from his current employment at Boomtown Casino which covers the time period of December 6, 2011 through January 8, 2012, the information provided does not establish a causal link between any alleged losses and the Deepwater Horizon oil spill.

Upon evaluation of the Claimant's monthly hours and wages earned at Pensacola Greyhound Track, it is important to note that the Claimant's hours declined drastically between March and April 2010 from 111.50 hours down to 83.42 hours, which was prior to the oil spill. Also, Claimant's hours and wages consistently fluctuated from May through November 2010.¹³ Claimant provided no clear explanation of why such a decline occurred; therefore, the NPFC is unable to determine if that decline was the beginning of an issue other than the oil spill. Additionally, while the Claimant's hours were reduced in May 2010 from April 2010, the overall wages earned by the Claimant in May 2010 were higher than the wages he earned in April 2010 prior to the oil spill indicating tip income was higher immediately following the oil spill.

While Claimant notes that he has many years experience working in the casino industry, it is unclear what casino he was employed by in 2008, when he made \$28,971.00 and in 2009, when he made \$30,053.00. Nor is it clear what his position might have been in 2008 and 2009. The NPFC notes that his current position is as a supervisor and his 2008 and 2009 wages might not have been as a supervisor. He began his employment with Pensacola Greyhound only four months prior to the oil spill and his initial income may have been lower at the beginning of that employment.

In summary the Claimant's reduced income in 2010 could have been due to other factors than the oil spill. Claimant has failed to provide sufficient information and documentation to establish that his reduced income in 2010 was due to the oil spill.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *3/13/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

¹³ The Pensacola Greyhound Track was a new casino and the fluctuation in hours and wages could have been related to the new business venture.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
3/13/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6616

David Ronald Dudley
[REDACTED]

RE: Claim Number: N10036-1533

Dear Mr. Dudley:

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 claim number N10036-1533 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form