

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
5 December 2011

Mr. Scott Beck
[REDACTED] Ct

Re: Claim Number: N10036-1544

Dear Mr. Beck:

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 N10036-1544 involving the Deepwater Horizon oil spill. 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 N10036-1544.

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	N10036-1544
Claimant	Mr. Scott Beck
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$4,000.00

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 4 November 2011, Mr. Scott Beck, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$4,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon oil spill, the Claimant was a full-time college student, anticipating beginning a summer job as a server at Marina Café in Destin, Florida.² The Claimant alleged that beginning in early May 2010, and he was to start working full-time, approximately thirty-five hours each week.³ The Claimant estimated that he would earn about \$15.25 per hour, including tips.⁴

The Claimant stated that, “as soon as I started to work at Marina Café in early May 2010, I was told that since the Deepwater Horizon Incident, tourism in the panhandle of Florida had significantly impacted the business and my hours would be drastically cut.”⁵ The Claimant alleged that by the end of July, he was working so little, that traveling to work was no longer profitable, causing the Claimant to decide to leave his job in August of 2010.⁶

The Claimant estimated that the Deepwater Horizon oil spill resulted in a reduction in his working hours and tips, causing him to sustain a loss of income of \$4,000.00, which he now seeks from the OSLTF.

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

¹ Optional OSLTF Claim Form, received 16 November 2011.

² Letter from the Claimant to the NPFC, 28 October 2011.

³ Letter from the Claimant to the NPFC, 28 October 2011.

⁴ Letter from the Claimant to the NPFC, 28 October 2011.

⁵ Letter from the Claimant to the NPFC, 28 October 2011.

⁶ Letter from the Claimant to the NPFC, 28 October 2011.

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, the Claimant submitted the following documentation:

- Letter from the Claimant to the NPFC, dated 28 October 2011;
- Letter from the Claimant to the GCCF, providing additional information, dated 12 May 2011;
- Letter from the Claimant to the GCCF, listing additional information, dated 9 June 2011;
- Description of Marina Café;
- Map showing location of Marina Café;

- Letter from the Claimant, “Oil Spill Impact”;
- GCCF Determination Letter on Final Payment Claim, 24 June 2011;
- 2008 Form W-2 Wage and Tax Statement, showing wages of \$3,020.39 at Landry’s Seafood House;
- 2010 Form W-2 Wage and Tax Statement, showing wages of \$3,749.00 at Marina Café, Inc.;
- 2008 Form 1040EZ;
- Landry’s Restaurant Earnings Statements;
- Marina Café/Payroll Account Statements;
- Copy of the Claimant’s Social Security Card and Driver’s License;
- Letter authorizing communication with agent, Diane D. Beck, 30 June 2011;
- Email response to request for additional information, 28 November 2011;
- Letter responding to request for additional information, 23 November 2011;
- UCF Payroll services documentation, 5/13/2011 – 08/04/2011.

On 12 May 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking \$7,000.00 in loss of profits and wages damages.⁷ The Claimant was assigned Claimant ID 3514996 and the FRF claim was assigned claim # 9363730. This claim was denied by the RP/GCCF and is currently under re-review.⁸

On 4 November 2011, the Claimant presented this claim to the NPFC seeking \$4,000.00 in loss of profits damages. Because this claim was first presented to and denied by the RP/GCCF, OPA’s presentment requirements have been met, and the NPFC may fully adjudicate this claim in the amount of \$4,000.00.⁹

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, 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 this claim.

This claim is based on the Claimant’s alleged loss of income in his position as a server at Marina Café, in Destin, Florida. The Claimant was hired in mid-April 2010, and began working in May 2010.¹⁰ The Claimant stated that he had anticipated working full-time, but that due to the decrease in tourism resulting from the Deepwater Horizon oil spill; his hours were significantly lower than full-time, prompting him to leave his job at the end of July 2010.

In order to prove a loss of profits claim, OPA requires that a claimant provide evidence to show “the amount of the claimant’s profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered.”¹¹ Because the Claimant began working in May of 2010, the Claimant does not have comparable pre-spill income on which to base a loss. Therefore, the NPFC requested that the Claimant provide evidence of the earnings of other

⁷ GCCF United States Coast Guard Report, 21 November 2011.

⁸ GCCF United States Coast Guard Report, 21 November 2011.

⁹ 33 C.F.R. § 136.103(a).

¹⁰ Letter from the Claimant to the NPFC, 28 October 2011.

¹¹ 33 C.F.R. § 136.233.

servers at the restaurant in the period leading up to the Deepwater Horizon oil spill.¹² The NPFC also requested that the Claimant provide evidence to demonstrate that the restaurant actually sustained a loss in business as a result of the oil spill. The Claimant was unable to respond to either of these requests.¹³ Based on the information presented in the Claimant's original submission and in his response to the NPFC's request for additional information, the NPFC does not have sufficient evidence to verify that the Claimant's income was actually reduced as a result of the Deepwater Horizon oil spill.

Furthermore, OPA requires that a loss be verifiable, noting that "the amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered."¹⁴ The Claimant's losses, which are based on (1) loss of tip earnings and (2) loss of hours of an unverified working schedule, are speculative and have not been sufficiently verified. The NPFC requested that the Claimant produce evidence to verify that he was indeed guaranteed to work a certain number of hours each week.¹⁵ The Claimant was unable to respond to this request, stating that all agreements had been verbal and that there were "no contracts, emails or other form of communication showing that [the Claimant was] hired" to work any particular schedule.¹⁶

Based on the foregoing, the Claimant has not sufficiently verified his loss and has failed to meet his burden to demonstrate that (1) he sustained a financial loss in the amount of \$4,000.00, or (2) 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 Supervisor's Review: *12/5/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² NPFC request for additional information, 14 November 2011.

¹³ Response to request for additional information, 28 November 2011.

¹⁴ 33 C.F.R. § 136.235.

¹⁵ NPFC request for additional information, 14 November 2011.

¹⁶ Response to request for additional information, 28 November 2011.