

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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5890/DWHZ
9 December 2011

Ms. Anita M. Sanders
[REDACTED]

Re: Claim Number: N10036-1547

Dear Ms. Sanders:

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 N10036-1547 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 N10036-1547.

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	N10036-1547
Claimant	Ms. Anita Sanders
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$25,000.00

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 8 November 2011, Ms. Anita Sanders, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$25,000.00 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 working as a cook for a catering company in New Orleans, Louisiana. The Claimant alleged that she was laid off due to effects of the oil spill. Specifically, the Claimant stated that “the catering company that [the Claimant] worked for had land and oil rig contracts. They had to downsize due to the oil spill.”²

The Claimant seeks damages in the amount of \$25,000.00 resulting from the loss of her position with the catering company.³

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 § 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.

¹ Optional OSLTF Claim Form, signed 7 November 2011.

² Optional OSLTF Claim Form, signed 7 November 2011.

³ Optional OSLTF Claim Form, signed 7 November 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 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:

- Original Submission documents, claim N10036-0064;
- Optional OSLTF Claim Form, signed 12 November 2010;
- Hardship letter from the Claimant to the NPFC;
- Alabama 2009 Form 40;
- 2009 Form W-2 Wage and Tax Statement;
- Letter from the Claimant to the GCCF, noting non-inclusion of employer letter, requested by the GCCF, 5 October 2010;
- Letter from the GCCF to the Claimant, describing Rig Worker Assistance Fund, 7 October 2010;
- Letter from the GCCF to the Claimant, denying claim for Emergency Advance Payment, 23 October 2010;
- Record of 2009 Earnings, Sodexo;
- 2010 ADP Earnings Statement;
- Letter from the Claimant, describing attempt to file claim with Rig Workers Assistance Fund;
- Letter from the Claimant, describing losses and possible misclassification of her claim;
- Letter from the Claimant, noting GCCF denial;
- NPFC request for additional information, 23 December 2010;
- 2010 Form W-2 Wage and Tax Statement;

- GCCF Denial Letter on Interim Payment/Final Payment Claim, 15 October 2011.
- Optional OSLTF Claim Form, signed on 7 November 2011.

Prior to presentment of this claim to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF seeking loss of profits and earnings damages. The Claimant was assigned Claimant ID 1096130 and the EAP claim was assigned claim # 148988.⁴ This claim was denied on 23 October 2010.⁵

The Claimant then presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF seeking loss of profits and wages damages. The ICQ12011 was assigned claim # 9238802 and was denied by the RP/GCCF.

The Claimant then presented a Full Review Final Claim (FRF) to the RP/GCCF. FRF was assigned claim # 9014918 and was denied by the RP/GCCF on 15 October 2011.⁶

The Claimant initially presented this claim to the NPFC on 2 December 2010. The Claimant sought \$16,000.00 in loss of profits and earning capacity damages from the NPFC.⁷ The claim was initially processed by the NPFC under the claim number N10036-0064. The Claimant withdrew the claim on 10 January 2011 prior to the NPFC issuing a determination on the claim.⁸

On 8 November 2011, the Claimant resubmitted this claim, seeking \$25,000.00 in loss of profits and earning capacity damages.⁹ The NPFC assigned the resubmitted claim number N10036-1547. The NPFC may adjudicate this claim to the extent that these damages were first presented to and denied by the RP/GCCF. Any damage amount now presented to the NPFC, which was not first presented to the RP/GCCF, is denied for improper presentment.¹⁰

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 denied because the Claimant failed to demonstrate that any loss she alleged to have sustained was caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant alleged that following the Deepwater Horizon oil spill, she was laid off from her position with a catering company in New Orleans, Louisiana. In attempting to verify this information, the NPFC contacted a manager of the catering company, who stated that no employees were let go due to the Deepwater Horizon oil spill.¹¹ The manager further stated that if that particular location did lose work, the loss would have been due to effects of certain

⁴ GCCF Claimant Status, accessed on 8 December 2011.

⁵ GCCF Emergency Advance Payment Denial Letter, 23 October 2010.

⁶ GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim, 15 October 2011.

⁷ Optional OSLTF Claim Form, signed 12 November 2010.

⁸ Letter from the NPFC to the Claimant, 12 January 2011.

⁹ Optional OSLTF Claim Form, signed 7 November 2011.

¹⁰ 33 C.F.R. § 136.103(a).

¹¹ PHONECON: NPFC Staff and manager, Sodexo, 24 November 2011.

drilling and permitting regulations and would not have been the result of the discharge of oil resulting from the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$25,000.00, 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/9/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: