

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
Claim # N10036-1550
05 December 2011

Rasheed Haliburton-Middleton
[REDACTED]

Dear Mr. Haliburton-Middleton:

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 N10036-1550 involving Deepwater Horizon. 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 N10036-1550.

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	N10036-1550
Claimant	Rasheed Haliburton-Middleton
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$3,360.00

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 25 October 2011, Rasheed Haliburton-Middleton (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$3,360.00 for loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

The Claimant worked as an oil spill responder for LGS Staffing and Construct Corporation in Pensacola Florida.¹ The Claimant stated that his loss of earnings is due to his work on the oil spill response ending sooner than promised. He was collecting unemployment compensation before the oil spill.²

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 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:

¹ OSLTF Claim Form signed by Claimant 23 September 2011. Also Construct Corp. Contractor's badge and PEC card for LGS dated 14 September 2010

² Handwritten letter from Claimant dated 21 November 2011 explaining his claim

- (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, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 23 September 2011
- Construct Corp. Contractor's badge
- PEC card for LGS dated 14 September 2010
- Gulf Power Company bill period ended 14 December 2010
- Handwritten memo on Navy Lodge note pad about working for Construct dated 23 August 2011
- 2010-2011 Local Business Tax Receipt Notice, Escambia County, Florida, for retail peddler
- GCCF Denial Letter Emergency Advance Claim dated 02 November 2010

- GCCF Denial Letter on Interim Payment dated 12 August 2011
- W-2 Wage and Tax Statement for 2010 from LGS Services
- Business card from John Valenti, National Account Manager, Construct Corp.
- Handwritten letter from Claimant explaining his claim dated 23 April 2011
- GCCF Denial Letter on Interim Payment dated 01 April 2011
- Handwritten letter from Claimant dated 21 November 2011 explaining his claim

On 09 November 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 30 November 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The claim was assigned Claimant ID #1172894 and claim #4002912.³ The EAP claim was denied on 02 November 2011.⁴ Additionally, Claimant filed a Final Payment (FP) claim with the GCCF. The claim was assigned claim #9135986.⁵ The FP claim was denied on 01 April 2011.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of either the EAP or FP claims as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party. To the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1550 considers and addresses the loss of earnings up to the amount of \$3,360.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #4002912 EAP and #9135986 FP.

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 or destruction or loss of real or personal property or 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.

The Claimant stated that he lost earnings due to the oil spill.⁷ The Claimant stated that his loss of earnings is due to his work on the oil spill response ending sooner than

³ GCCF On-Line Claim Status Report

⁴ GCCF Denial Letter dated 02 November 2011

⁵ GCCF On-Line Claim Status Report

⁶ GCCF Denial Letter dated 01 April 2011

⁷ OSLTF Claim Form signed by Claimant 23 September 2011

promised. However, by working as an oil spill responder, the Claimant had earnings due to the spill. Before the oil spill, he was collecting unemployment compensation.⁸ Additionally, the Claimant has not demonstrated that at the time of hire as an oil spill response worker that he was guaranteed in writing employment for a specified period of time therefore he has failed to demonstrate he has losses associated with a position based on corporate need.

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

Date of Supervisor's Review: *05 December 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ Handwritten letter from Claimant dated 21 November 2011 explaining his claim