

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

5890
10 February 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8672

Eddie L. Woodall
[REDACTED]

Re: Claim Number: N10036-1551

Dear Mr. Woodall:

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 N10036-1551 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 N10036-1551.

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: (1) Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1551
Claimant	: Eddie Woodall
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$23,000.00

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, Eddie L. Woodall ('the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$23,000.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant is a construction worker, employed by two construction and remodeling companies along the Mississippi Gulf Coast prior to the oil spill, and asserts his claim for loss of wages.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 § 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.

¹ Optional OSLTF Claim Form signed 28 October 2011 and received 8 November 2011.

² Optional OSLTF Claim Form signed 28 October 2011 and received 8 November 2011.

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

The Claimant asserts having presented a claim to BP in April 2010 and that it had been denied.³ The NPFC independently confirmed that presentation had been made to BP, although the amount claimed to BP was not available to the NPFC. The NPFC also confirmed that an Interim Payment (IP) Claim for Lost Wages/Earnings had been made to the GCCF on 3 January 2011 in the amount of \$2,010.00.⁴ The GCCF claim was filed under GCCF Claimant ID # 115947 and it, as well as an IP Claim for subsistence, has been denied.⁵ A Full and Final Review Claim for subsistence remains open at the GCCF, but that claim does not bear on the Claimant's Loss of Profits and Earning Capacity claim before the NPFC.⁶

On 8 November 2011, the Claimant presented this claim to the Oil Spill Liability Trust Fund (OSLTF) for \$23,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁷

To support this claim the Claimant presented the following documentation:

- Optional OSLTF Claim Form signed 28 October 2011 and received 8 November 2011
- Letter from Joan Cravens, Inc. dated 14 March 2011
- Letter from E&D Construction, LLC, dated 14 March 2011
- Letter to Kenneth R. Feinberg dated 14 March 2011
- 2010 Form SSA-1099-SM from Social Security Administration
- 2010 Form 1099-MISC from E&D Construction, LLC
- 2009 Form 1040 Tax Return (2 pages)
- Email from Claimant to NPFC dated 30 November 2011 in response to the NPFC's request for additional information dated 15 November 2011

NPFC Determination

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

³ Optional OSLTF Claim Form signed 28 October 2011 and received 8 November 2011; no claim amount was provided.

⁴ GCCF – U.S. Coast Guard Report as of 23 January 2012.

⁵ GCCF – U.S. Coast Guard Report as of 23 January 2012.

⁶ GCCF – U.S. Coast Guard Report as of 23 January 2012.

⁷ Optional OSLTF Claim Form signed 28 October 2011 and received 8 November 2011.

adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA. 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 has considered all documentation and information presented by the Claimant.

As a preliminary matter, a Claimant is required to present the same claim to the NPFC as was presented to the RP.⁸ Amounts claimed to the NPFC in excess of the amount claimed to the RP are denied due to lack of presentment to the RP: \$20,990 of this claim is denied for lack of presentment to the RP. Amounts that were properly presented to the RP/GCCF (\$2,010.00) are addressed below. If the Claimant submits a Request for Reconsideration to the NPFC, evidence of the Claimant's having presented another claim amount to the RP/GCCF should be provided to the NPFC at that time.

The remaining portion of this claim is also denied because the Claimant has not proven either the alleged amount of his loss or that his alleged loss was due to the Deepwater Horizon oil spill.

Failure to Prove the Alleged Loss

The Claimant's documentation includes letters from two business owners for whom he worked in 2009/2010 (E&D Construction, LLC, and Joan Cravens Construction, Inc.),⁹ his personal tax return for 2009,¹⁰ and two Form 1099s for 2010.¹¹ After an initial review, the NPFC sent the Claimant a letter requesting additional information to evaluate the claim further. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. On 30 November 2011, the Claimant responded in part to the information request by providing a number of explanations.¹² Other than those explanations, no additional documentation has been received.

The OSLTF is available to pay for a loss of profits compared to previous periods. The Claimant provided 2009 tax return information but did not provide either 2008 or 2010 tax returns, a tax worksheet that indicates no 2010 tax return was required to be filed or other documentation that shows total income in 2010. Although the Claimant provided two Form 1099s for 2010, the NPFC cannot assume there was no other income reported in 2010 without the requested documentation. Additionally, the NPFC cannot compare the income he has reported with the comparable period of 2008. Accordingly, the evidence provided by the Claimant does not establish his alleged loss.

Failure to Prove the Alleged Loss was Due To the Deepwater Horizon Oil Spill

The Claimant stated that he calculated lost earnings for 2010 in the amount of \$23,000.00 by subtracting amounts he earned in 2010 from the amounts he had earned in 2009.¹³ To mitigate damages, the Claimant stated that he worked in Arkansas with E&D Construction, rebuilding homes and structures destroyed by a tornado when there was no work in Mississippi.¹⁴

The NPFC spoke with E&D Construction's owner, who stated that E&D's residential construction work in Mississippi "went due south" after the oil spill and that they took a project in Arkansas to keep going;

⁸ 33 C.F.R. § 136.103(a) requires that, except as provided in paragraph (b) of the section, "all claims for removal costs or damages must be presented first to the responsible party or guarantor ..." Subparagraph (b) does not apply to this claim.

⁹ Letter from Joan Cravens, Inc. dated 14 March 2011 and Letter from E&D Construction, LLC, dated 14 March 2011.

¹⁰ Individual Income Tax Returns (Form 1040) for 2009, without Schedules or Forms.

¹¹ Form SSA-1099-SM from Social Security Administration, and Form 1099-MISC from E&D Construction, LLC.

¹² Claimant email to NPFC Staff dated 30 November 2011.

¹³ Claimant email to NPFC Staff dated 30 November 2011.

¹⁴ Claimant email to NPFC Staff dated 30 November 2011.

after that project's completion, the company had no future business and closed.¹⁵ The owner confirmed that the Claimant had worked for him regularly in 2009 and 2010.¹⁶

The NPFC also confirmed that the Claimant had worked for Joan Cravens Construction, Inc.¹⁷ The owner stated that the Claimant is a relative and, for years, had worked for her as a cabinet maker and trim expert, but that she didn't have much work for him after the oil spill. Asked if the cause for the lack of work was the economy, she said there are always peaks and valleys, but overall it was good before the oil spill. She stated that, after the oil spill happened, contracts that were underway were completed, but new contracts came to a halt and the phone literally stopped ringing.¹⁸ She had to make cutbacks; people, who had specialty skills, like plumbers and interior trim experts, were kept and the Claimant was kept as long as possible for interior trim work.¹⁹

The NPFC requested that the Claimant provide evidence or documentation that would indicate that the claimed damages were caused by the Deepwater Horizon oil spill, and not other factors. The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven by the Claimant. Here, the Claimant has provided letters from former employers and stated, "After the oil spill, nobody wanted to move [to the Mississippi Coast] or do home repairs. ... Construction work stopped."²⁰ Statements without supporting evidence beyond mere assertions are not satisfactory to prove that the alleged loss was caused by the oil spill as opposed to a myriad of other factors such as an overall decline in the economy or a decline in the housing market. If the Claimant submits a request for Reconsideration to the NPFC, evidence linking his alleged loss to the Deepwater Horizon oil spill must be submitted in order for his claim to be successful.

This claim is denied for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim; (2) Claimant has failed to demonstrate the alleged loss through financial documentation; and (3) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *2/10/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁵ Phone conversation with David Somers, E&D Construction owner, on 14 November 2011.

¹⁶ Phone conversation with David Somers, E&D Construction owner, on 14 November 2011.

¹⁷ Phone conversation with Joan Cravens, President of Joan Cravens Construction, Inc., on 14 November 2011.

¹⁸ Phone conversation with Joan Cravens, President of Joan Cravens Construction, Inc., on 14 November 2011.

¹⁹ Phone conversation with Joan Cravens, President of Joan Cravens Construction, Inc., on 14 November 2011.

²⁰ Optional OSLTF Claim Form signed 28 October 2011 and received 8 November 2011.