

U.S. Department of
Homeland Security

**United States
Coast Guard**




Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8962

5890/DWHZ
8 February 2012

Sharon B. Dorthey


Re: Claim Number: N10036-1565

Dear Ms. Dorthey:

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 your claim number N10036-1565 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1565.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1565
Claimant	Sharon B. Dorthey
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

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 17 November 2011, Sharon B. Dorthey (the Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$10,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant asserts that she lost income as a Demo Rep at Sam's Club in the New Orleans area as a result of the Deepwater Horizon oil spill.¹ The Claimant states that the company started to drop hours and cut back days after the spill.²

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

¹ Claimant's optional OSTLF claim form dated 3 November 2011.

² Claimant's optional OSTLF claim form dated 3 November 2011.

- (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 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 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

The Claimant's Submission to the OSLTF

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 3 November 2011;
- Pay stubs from Advantage Sales and Marketing, LLC dated 6/11/2010, 6/25/2010, 7/9/2010, 8/6/2010, 8/5/2011, 8/19/2011, 10/14/2011, 10/28/2011;
- Letter from the Claimant dated 11/3/2011;
- Copy of 2010 W-2 form.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 27 August 2010 in the amount of \$10,000. The Claimant was assigned Claimant ID # 3042771 and Claim # 96211. The EAP claim was denied by the GCCF. The Claimant also filed two Interim Payment claims for loss of income; Claim # 9211791 (ICQ12011) for \$8,000.00, and Claim # 9438399 (ICQ32011) for \$8,000.00. Both of these claims were denied by the GCCF.³

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims regarding loss of earnings is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced reduced earnings. The NPFC

³ GCCF claim information is from a GCCF claim status report dated 1 February 2012.

deems that Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1565 considers and addresses the earnings claimed in the claims presented to the responsible party; specifically GCCF Claim #'s 96211 (EAP), 9211791 (ICQ12011), and 9438399 (ICQ32011).

NPFC Determination

The claim is denied. 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 considered all documentation presented by Claimant.

This claim is denied because the Claimant has neither established that she experienced a financial loss nor proved that any alleged losses were due to the Deepwater Horizon oil spill.

In support of her claim, the Claimant submitted only the optional OSLTF claim form, pay stubs from various periods of time after the Deepwater Horizon oil spill, and a single W-2 from 2010. On 1 December 2011, the NPFC requested additional information from the Claimant to substantiate her claim. The NPFC requested documentation, such as full and complete federal income tax returns for 2008 to 2010, paystubs for all employment from 2008 to 2010, and a letter from her employer explaining how the company was affected by the oil spill. To date, the Claimant has not responded to this request. The Claimant failed to provide sufficient documentation supporting the claim and has not explained how she arrived at the claim amount of \$10,000.00.

This claim is denied because (1) the Claimant failed to meet her burden to demonstrate that there was a loss in the amount claimed and (2) failed to meet her burden to demonstrate 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: *2/8/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: