

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1567
Claimant	: Allen Holder
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$2,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 17 November 2011, Allen Holder (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$2,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant is an unlicensed electrician who provides electrical work independent of a company.¹ The Claimant takes an annual two week vacation to Biloxi Mississippi during the summer.² The Claimant asserted that he canceled four electrical jobs in the amount of \$2,000.00 in order to take his annual vacation but ultimately couldn't take his annual vacation due to the Deepwater Horizon oil spill.³ The Claimant alleged that because the oil spill happened, he had to cancel his vacation and thus should be reimbursed for the four jobs he cancelled in order to take his vacation.⁴

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 07 October 2010 in the amount of \$1,000.00.⁵ He was assigned Claimant ID #1094682 and claim #174965.⁶ This claim was denied on 07 December 2010.⁷ Additionally, the Claimant filed a Full Review Final claim (FRF) with the GCCF on 08 December 2010 for \$1,000.00; he was assigned GCCF #9014533.⁸ The FRF claim was denied on 07 November 2011.⁹ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC

¹ Letter to the GCCF from the Claimant explaining his claim undated.

² Letter from the Claimant explaining his loss dated 18 October 2010.

³ Letter from the Claimant explaining his loss dated 18 October 2010.

⁴ Letter from the Claimant explaining his loss dated 18 October 2010.

⁵ Report from the GCCF dated 05 December 2011.

⁶ Report from the GCCF dated 05 December 2011.

⁷ GCCF Denial Letter dated 07 December 2010.

⁸ Report from the GCCF dated 05 December 2011.

⁹ GCCF Denial Letter dated 07 November 2011.

deems both of the claims denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1567 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 174965 (EAP) and 9014533 (FRF1).

REQUEST FOR RECONSIDERATION:

On December 18, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on December 13, 2011 because the Claimant alleged lost income from four electrical jobs that he individually cancelled in order to take a vacation to Biloxi Mississippi.¹⁰ The Claimant stated that he could not vacation in Biloxi Mississippi because of the Deepwater Horizon oil spill.¹¹ The four cancellations were not cancelled due to the Deepwater Horizon oil spill but instead were unilaterally cancelled by the Claimant due to his change in vacation plans.¹² There is no evidence that the four job opportunities were not still available when he planned to come back from his vacation or that he could not perform the work at another date in 2010. Accordingly, the Claimant has provided no documentation to substantiate his alleged loss of profits and impairment of earnings capacity or to show that his alleged loss of earnings was due to the Deepwater Horizon oil spill.

This claim was denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on January 3, 2012. The Claimant provided a one-page letter that requested his claim be reconsidered because the Claimant stated he feels he provided all the documents needed. It is important to note that the Claimant provided no new information pertinent to his alleged losses in support of his request for reconsideration.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

¹⁰ Letter from the Claimant explaining his loss dated 18 October 2010.

¹¹ Letter from the Claimant explaining his loss dated 18 October 2010.

¹² Letter from the Claimant explaining his loss dated 18 October 2010.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The request for reconsideration was a one-page letter reiterating that he did cancel four jobs to take a vacation but he again asserted that he was unable to take the vacation due to the oil spill. The Claimant further stated that he was unable to get in contact with the four clients after the oil spill and as such, feels he is entitled to compensation.

Based on the evidence presented to the NPFC, the Claimant provided no new evidence or information that would persuade the NPFC to change its original denial determination.

As such, the Claimant has again failed to demonstrate that he has suffered a loss 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.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *1/6/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
1/6/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6494

Allen Holder
[REDACTED]

RE: Claim Number: N10036-1567

Dear Mr. Holder:

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 claim number N10036-1567 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard