

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: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5589

5890/DWHZ
30 November 2011

Ms. Krystal Bullard



Re: Claim Number: N10036-1571

Dear Ms. Bullard:

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 N10036-1571 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 N10036-1571.

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	N10036-1571
Claimant	Ms. Krystal Bullard
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$6,000.00

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 18 November 2011, Ms. Krystal Bullard (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$6,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon oil spill, Ms. Bullard alleged to have been working for a franchise owner of Jani King, a cleaning service, in Pensacola, Florida.² The Claimant alleged that in lieu of standard payment, she was either paid about \$650.00 in cash each month, or that the franchise owner would pay the Claimant's bills directly.³

The Claimant alleged that following the Deepwater Horizon oil spill, the franchise owner no longer had work for the Claimant, so the Claimant left to take a position working for an oil spill response organization on Pensacola Beach.⁴ A letter from the Jani King franchise owner states that the Claimant began working with the oil spill response because it presented an opportunity for the Claimant to earn a higher income.⁵ The Claimant was let go from this position after "two or three" months for reasons unrelated to the Deepwater Horizon oil spill.⁶

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:

¹ Optional OSLTF Claim Form, 16 November 2011.

² Optional OSLTF Claim Form, 16 November 2011.

³ Letter from Angela Coker, 14 October 2010.

⁴ Letter from the Claimant to the GCCF, 1 November 2010.

⁵ Letter from Angela Coker, 14 October 2010.

⁶ Letter from the Claimant to the GCCF, 1 November 2010.

- (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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, 16 November 2011;
- Letter from Angela Coker, undated;
- 2009 Form 1040A;
- 2008 Form 1040A;
- 2009 Form W-2 Wage and Tax Statement;
- Letter from the Claimant to the GCCF, 1 November 2010.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF seeking loss of profits and impairment of earnings damages. The Claimant was assigned claimant ID# 1140932 and the EAP claim was assigned claim # 3004405.⁷ This claim was denied by the RP/GCCF.⁸

The Claimant then presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and impairment of earnings damages. The FRF claim was assigned claim # 9211035 and was denied by the RP/GCCF.⁹

⁷ GCCF Claimant Status, accessed on 28 November 2011.

⁸ GCCF Claimant Status, accessed on 28 November 2011.

⁹ GCCF Claimant Status, accessed on 28 November 2011.

On 18 November 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount of \$6,000.00. The NPFC may adjudicate this claim to the extent that these damages have first been presented to and denied by the RP/GCCF. Any damages not first presented to the RP/GCCF are denied for improper presentation.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 she sustained an actual financial loss as a result of the Deepwater Horizon oil spill.

The Claimant alleged that she stopped working with Jani King and took a position working for an oil spill response organization in June 2010 because the organization “guaranteed long term jobs.” However, the Claimant was let go after “two or three months” for reasons unrelated to the oil spill.¹¹ The Claimant’s loss of her position with the oil spill response organization is not a loss caused by the effects of the Deepwater Horizon oil spill, and is not compensable under OPA.

The Claimant has also not provided any verifiable proof of her earnings during her time working with Jani King, nor has the Claimant shown that these earnings decreased following the Deepwater Horizon oil spill. Because the Claimant has provided no record of her income or employment with Jani King, and has not provided evidence to show that her employer, Jani King, sustained a financial loss as a result of the Deepwater Horizon oil spill nor has the Claimant demonstrated that her profits were actually reduced as a result of the oil spill. Further, Claimant’s work with the oil spill response organization may have mitigated her alleged losses from Jani King. Claimant’s failure to submit documentation relating to her income as an oil spill response worker makes it impossible for the NPFC to ascertain whether, in fact, the Claimant incurred a loss of income.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$6,000.00, 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: *11/30/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹⁰ 33 C.F.R. § 136.103(a).

¹¹ In a letter to the GCCF, the Claimant stated that she “got fired for report[ing] a racial discrimination charge against the company I was working for.” Letter dated, 1 November 2010.