

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
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 9136

5890/DWHZ
Claim # N10036-1607
09 February 2012

Latonya Crenshaw
[REDACTED]

Re: Claim Number: N10036-1607

Dear Ms. Crenshaw:

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 N10036-1607 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 N10036-1607.

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	N10036-1607
Claimant	Latonya Crenshaw
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$4,000.00

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 14 December 2011, Latonya Crenshaw, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$4,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed by the Mobile Young Women's Christian Association (YWCA).¹ The Claimant asserts that due to the Deepwater Horizon oil spill she lost her job on 20 May 2010.² As a result, she contends that she suffered reduced income.³

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$4,000.00.

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.
- (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.

¹ Mobile Young Women's Christian Association pay stubs dated: 31 May 2010, 15 January 2010, 14 May 2010, 29 January 2011.

² Optional OSLTF Claim Form received 14 December 2011.

³ Optional OSLTF Claim Form received 14 December 2011.

- (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 received 14 December 2011;
- 2010 Form 1040 Individual Tax Return;
- GCCF Claim Form 2000-C;
- GCCF letter dated 29 January 2011
- Mobile Young Women's Christian Association pay stub dated: 31 May 2010, 15 January 2010, 14 May 2010, 29 January 2010;
- 2010 Form 8879 IRS e-file Signature Authorization;
- Alabama Department of Industrial Relations Weekly Claims System – Status Certification Information dated 14 September 2010;
- Photocopies of Social Security card and Alabama drivers license;
- Letter from Claimant dated 18 November 2010;
- Alabama Power Company bill dated 12 November 2010;
- GCCF Claim Form 2000-1 dated 04 January 2011;
- Mobile Young Women's Christian Association letter;
- 2010 Form 1040A Individual Tax Return;
- 2010 Form AL8453.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF for loss of profits and impairment of earnings capacity on 17 November 2011 in the amount of \$2,000.00.⁴ The Claimant was assigned Claimant ID # 3408017 and Claim ID # 483163. The EAP Claim was denied on 09 December 2010.⁵ The Claimant also filed an Interim Payment Claim Quarter I 2011 (ICQ12011) Claim with the GCCF for loss of profits and impairment of earnings capacity

⁴ Report from the GCCF dated 01 February 2012.

⁵ GCCF Denial Letter dated 09 December 2010.

on 05 January 2011 in the amount of \$10,500.00.⁶ The Claimant was assigned Claim ID # 9165561. The ICQ12011 was denied on 16 April 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the Claimant's GCCF claims is the same as the claim before the NPFC that the Claimant is seeking \$4,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill. The NPFC deems that the Claimant's GCCF claims was properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1607 considers and addresses the claim presented to the responsible party up to \$4,000.00; specifically, GCCF Claim ID's # 483163 (EAP) and # 9165561 (ICQ12011).

NPFC Determination

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 the Claimant.

The Claim is denied because the Claimant fails to prove that the alleged loss in the amount of \$4,000.00 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.

The Claimant asserts she was laid-off from her job at the Mobile YWCA because the YWCA went out of business and closed,⁸ and she subsequently suffered reduced income.⁹ The NPFC contacted the Mobile YWCA to verify the Claimant's assertions and connect her loss to the Deepwater Horizon oil spill.¹⁰ The Mobile YWCA stated that they did not close and had continuously operated in Mobile with no impact from the Deepwater Horizon oil spill.¹¹ Thus, the Deepwater Horizon oil spill had no impact on the Claimant's employment at the Mobile YWCA.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

The Claimant's request for \$4,000.00 is hereby denied because the evidence presented by the Claimant vice the detailed information provided by the Claimant's former employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order for the Claimant to try to obtain funds from the Federal Government under false pretenses.

Claim Supervisor:

Date of Review:

Supervisor's Actions:

Supervisor's Comments:

⁶ Report from the GCCF dated 01 February 2012.

⁷ GCCF Denial Letter dated 16 April 2011.

⁸ Letter from Claimant dated 18 November 2010.

⁹ Optional OSLTF Claim Form received 14 December 2011; letter from Mobile Womens Christian Association [undated].

¹⁰ PHONECON between the NPFC and Mobile YWCA dated 07 February 2012.

¹¹ Email from Mobile YWCA dated 07 February 2012.