

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
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8863

5890/DWHZ
15 February 2012

Angela Washington
[REDACTED]

Re: Claim Number: N10036-1596

Dear Ms. Washington:

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 N10036-1596 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 N10036-1596.

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	N10036-1596
Claimant	Angela F. Washington
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$4,500.00

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 06 December 2011, Angela F. Washington (the Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$4,500.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant was working in the hospitality field in Gulfport, Mississippi.¹ The Claimant asserts that her income decreased as a result of the Deepwater Horizon oil spill.² The Claimant states that her working hours were lowered tremendously due to the spill.³

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

¹ Optional OSTLF Claim Form dated 03November 2011.

² Optional OSTLF Claim Form dated 03November 2011.

³ Optional OSTLF Claim Form dated 03November 2011.

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.
- (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 Oil Spill Liability Trust Fund (OSLTF) Claim Form dated 03 November 2011;
- Copy of Claimant's Mississippi Driver's License;
- Copy of Claimant's Social Security Card;
- 2009 Tax Return Transcript dated 21 June 2011; and
- 2010 Tax Return Transcript dated 21 June 2011.

The Claimant did not provide any information regarding the presentment of her claim to the Responsible Party (GCCF). The NPFC was unable to verify, either through the Claimant or the RP that this claim was properly presented to the GCCF.

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 the Claimant.

This claim is denied because the Claimant has failed to establish: (1) that her claim was properly presented to the responsible party, (2) that she experienced a financial loss, and (3) that her alleged losses were due to the Deepwater Horizon oil spill.

Failure to Establish Presentment

Under 33 U.S.C. § 2713(a), claimants must first present their claim to the Responsible Party, except for limited exceptions not applicable to the Claimant. The Claimant did not provide the NPFC with any information evidencing that she presented her claim to the GCCF. The GCCF informed the NPFC that it had no record of a claim from the Claimant.⁴ As well, the NPFC attempted to reach the Claimant by phone,⁵ sent the Claimant two emails attempting to get documentation of her presentment,⁶ and requested her GCCF information via letter.⁷ The Claimant never responded to the NPFC's requests. Consequently, the Claimant failed to provide the NPFC with sufficient evidence to prove that she has proper presentment of her claim before the NPFC.

Failure to Prove Loss

The Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The financial documentation provided by the Claimant indicated that she earned more in 2010 (\$10,151.00)⁸ than she did in 2009 (\$8,028.00)⁹. Consequently, the Claimant failed to prove that her earnings were reduced as a result of the Deepwater Horizon oil spill.

Failure to Prove Causation

The Claimant failed to prove that her alleged loss was a result of the Deepwater Horizon oil spill. In support of her claim, the Claimant submitted only the optional OSLTF claim form, copies of her Social Security card and Mississippi Driver License, and tax transcripts from 2009 and 2010. On 19 December 2011, the NPFC requested additional information from the Claimant to

⁴ Report from the GCCF, dated 23 December 2011.

⁵ Phone calls from the NPFC to the Claimant on 6 December 2011. However, the phone number given to the NPFC by the Claimant was not functional.

⁶ Emails from the NPFC to the Claimant on 29 November 2011 and 06 December 2011.

⁷ Letter from the NPFC to the Claimant on 19 December 2011.

⁸ 2010 Tax Return Transcript dated 21 June 2011

⁹ 2009 Tax Return Transcript dated 21 June 2011

substantiate her claim. The NPFC requested documentation, such as paystubs and letters from her employer(s) supporting her loss. As well, the NPFC requested that Claimant provide detailed information of her employment history. To date, the Claimant has not responded to this request. Accordingly, the Claimant failed to provide sufficient documentation to prove that she suffered a loss due to the Deepwater Horizon oil spill.

This claim is denied because (1) the Claimant failed to provide evidence of proper presentment to the Responsible Party, (2) the Claimant failed to meet her burden to demonstrate that there was a loss in the amount claimed and (3) the Claimant 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: *2/15/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: