

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
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5890/DWHZ
26 March 2012

Mr. Demetrice Cummings



Re: Claim Number: N10036-1608

Dear Mr. Cummings:

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 N10036-1608 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 N10036-1608.

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	N10036-1608
Claimant	Demetrice Cummings
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$18,700.00

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 15 December 2011, Mr. Demetrice Cummings (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$18,700.00 in loss of profits and impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working for a seafood processor in Apalachicola, Florida. Approximately six months after the oil spill, the Claimant alleged to have been temporarily laid off from his position as a result of the Deepwater Horizon oil spill.² A letter from the Claimant's employer states that the Claimant was laid off from 6 October 2011 until 1 July 2011 "due to the oil spill."³

The Claimant states that at the time he was laid off, he was earning \$550.00 per week, and therefore seeks \$18,700.00 for the 34.5 weeks during which he was unemployed following the oil spill.⁴

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:

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

¹ Optional OSLTF Claim Form, signed on 7 December 2011.

² Optional OSLTF Claim Form, signed on 7 December 2011.

³ Letter from Rusty Crum to the GCCF, undated.

⁴ Optional OSLTF Claim Form, signed on 7 December 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 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, signed on 12 January 2012;
- Letter from the Claimant's employer to the GCCF, undated;
- Rusty Crum Seafood, Employee State taxes Detail, January – December 2011;
- Rusty Crum Account QuickReport, January through December 2010;
- 2009 Form W-2 Wage and Tax Statement, showing wages of \$11,000.00;
- 2010 Form W-2 Wage and Tax Statement, showing wages of \$20,700.00.
- Response to NPFC Request for Additional Information, received on 18 January 2012;
- Letter from the Claimant's employer in response to NPFC request for additional information, 6 January 2012;
- Graham Shrimp Company, Inc., Sales by Customer Detail, 2/12/2009 – 5/5/2011.

Prior to presentment of this claim to the NPFC, the Claimant presented an initial claim to BP. The Claimant was compensated by BP in the amount of \$1,000.00 on 31 May 2010.⁵

On 1 September 2010, the Claimant filed an Emergency Advance Payment (EAP) claim with the RP/GCCF, seeking loss of profits and wages damages of \$7,200.00.⁶ The Claimant was

⁵ GCCF United States Coast Guard Report, 16 February 2012.

assigned Claimant ID 1094388 and the EAP claim was assigned claim # 46948.⁷ The RP/GCCF issued payment on this claim in the amount of \$8,300.00.⁸

On 30 December 2010, the Claimant submitted a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$27,250.00.⁹ The ICQ12011 was assigned claim # 9108686 and was denied by the RP/GCCF.

On 13 December 2011, the Claimant submitted a Fourth Quarter Interim Payment Claim (ICQ42011) to the RP/GCCF, seeking \$18,700.00 in loss of profits and wages damages. The ICQ42011 was assigned claim # 9546198 and was denied by the RP/GCCF.¹⁰

On 12 October 2011, the Claimant submitted a Quick Pay claim to the RP/GCCF. The Quick Pay claim was assigned claim # 9511682 and was also denied.

On 15 December 2011, the Claimant submitted this claim to the NPFC, seeking \$18,700.00 in loss of profits and impairment of earning capacity damages.¹¹ The Claimant's submission indicates that the subject matter of this claim for \$18,700.00 is the same as the subject matter of the Claimant's ICQ42011, as presented to and denied by the RP/GCCF. Presentment requirements under OPA have therefore been satisfied, and the NPFC may fully adjudicate this claim for lost earnings in the amount of \$18,700.00.¹²

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.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In order to calculate the extent of a claimant's financial loss, OPA requires in part, that a claimant provide record of "(a) all income resulting from the incident; and (b) all income from alternative employment or business undertaken."¹³

To gather information necessary to comply with the requirements of law listed above, the NPFC sent the Claimant a letter via certified mail, requesting certain additional information in support of this claim, including financial documentation to indicate the extent of the Claimant's losses and to verify all sources of the Claimant's income.¹⁴ Among other items, the NPFC requested that the Claimant provide copies of federal tax returns or tax return transcripts for 2008, 2009 and 2010.¹⁵ The NPFC also requested that the Claimant provide a record of income earned

⁶ GCCF United States Coast Guard Report, 16 February 2012.

⁷ GCCF United States Coast Guard Report, 16 February 2012.

⁸ GCCF United States Coast Guard Report, 16 February 2012.

⁹ GCCF United States Coast Guard Report, 16 February 2012.

¹⁰ GCCF United States Coast Guard Report, 16 February 2012.

¹¹ Optional OSLTF Claim Form, signed on 7 December 2011.

¹² 33 C.F.R. 136.103(a).

¹³ 33 C.F.R. 136.235(a-b).

¹⁴ NPFC Request for additional information, 27 December 2011.

¹⁵ NPFC Request for additional information, 27 December 2011.

during the time that the Claimant was not working for his primary employer, a seafood processor.¹⁶ However, the Claimant responded by stating that he could not provide copies of tax returns or bank account statements to verify the totality of his income.¹⁷

Furthermore, the Claimant has indicated that he has earned a certain amount of unrecorded income as a result of the oil spill. In a phone conversation with NPFC staff on 19 March 2012, the Claimant indicated that as a result of the oil spill, he worked for the Vessel of Opportunity (VoO) program.¹⁸ However, the Claimant stated that he would be unable to provide verification of this income in the form of pay stubs, bank account statements or tax returns.¹⁹

Because the Claimant has not provided tax returns or other documentation to demonstrate the totality of his earnings prior to and during the period in which he was allegedly affected by the oil spill, he has not shown whether or not he has been fully compensated for his alleged losses by payments previously made to him by both BP and the GCCF.

Should the Claimant chose to pursue this claim on reconsideration, the Claimant should provide documentation of all income earned from 2008 to present, specifically including any income earned as a result of the Deepwater Horizon oil spill. The Claimant should provide signed and completed income tax returns, as a verifiable record of all income.

This claim is denied because the Claimant has not provided financial documentation sufficient to demonstrate that he sustained an uncompensated loss in the amount of \$18,700.00 as a result of the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *3/26/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁶ NPFC Request for additional information, 27 December 2011.

¹⁷ Response to NPFC Request for Additional Information, received on 18 January 2012; PHONECON: NPFC Staff and the Claimant, 19 March 2012.

¹⁸ PHONECON: NPFC Staff and the Claimant, 19 March 2012.

¹⁹ PHONECON: NPFC Staff and the Claimant, 19 March 2012.