

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1612
Claimant	: Rebekah Patti
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$7,644.02

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:

The Claimant worked at Gulf Coast Seafood Deli from 5 May 2008 until 1 August 2010.¹ In her submission to the NPFC, the Claimant stated, “[t]he seafood company I worked for laid me off. They said business was still bad and they did not know if or when they could bring me back.”²

On 19 December 2011, Ms. Rebekah Patti (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$7,644.02 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.³ Claimant continued to be unemployed through 2011 and stated that “I’ve tried to find another job, but the economy is so bad I have not been able to find one.”⁴

On 3 January 2011, the NPFC sent the Claimant a letter via certified mail, requesting certain additional information in support of the Claimant’s claim for 2011 lost wages. In order to determine whether or not employment may have been reasonably available to the Claimant, and as proof that the Claimant’s unemployment in 2011 was not due to the Claimant’s failure to make meaningful attempts at securing employment, the NPFC requested that the Claimant provide evidence of the Claimant’s attempts to find work, “such as emails to employers, and names of places where [the Claimant] sought employment,”⁵

The Claimant responded by stating “I have applied at restaurants and attempted to get back in the airline industry as a flight attendant.”⁶ However, the Claimant provided no documentary evidence to support this assertion. Furthermore upon contacting the Claimant’s former employer, the NPFC learned that although the employer would be unable to hire the Claimant to

¹ Record of the Claimant’s earnings, 01/08/2009 to /8/05/2010.

² Optional OSLTF Claim Form, signed on 16 December 2011.

³ Optional OSLTF Claim Form, dated 3 August 2011.

⁴ Optional OSLTF Claim Form, signed on 16 December 2011.

⁵ NPFC request for additional information 3 January 2012.

⁶ Response to NPFC request for additional information, received on 18 January 2012.

work full-time, although a part-time position would be available to the Claimant if she so desired.⁷

Prior to presentment of this claim to the GCCF, the Claimant received payment from BP in the amount of \$2,140.00.⁸ The Claimant then presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$11,960.00.⁹ The Claimant was assigned Claimant ID 1153552, and the EAP claim was assigned GCCF Claim # 18980, and was paid in the amount of 12,000.00.¹⁰

The Claimant then presented First, Second, Third and Fourth Quarter Interim Payment Claims to the RP/GCCF (ICQ12011, ICQ22011, ICQ32011, and ICQ42011). In each claim, the Claimant sought loss of profits and wages damages in the following respective amounts: \$7,860.00, \$5,980.00, \$6,160.00 and \$5,980.00.¹¹ The claims were assigned Claim #'s 9312496, 9391424, 9422908 and 9506788, and were paid by the GCCF in the following amounts: \$1,700.00, \$0.00, \$5,907.58, \$3,452.62.¹² The Claimant received payments from BP and from the GCCF, totaling \$25,200.00 over 2010 and 2011.¹³ However, the Claimant alleged that had she continued to earn the salary she was earning prior to the oil spill, she would have earned a 2011 salary of \$23,920.00.¹⁴ The Claimant alleges that she has been undercompensated by the GCCF for 2011, in the amount of \$7,644.02, which she now seeks from the NPFC.

The Claimant also submitted a Final Payment Claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$90,000.00.¹⁵ The Final Payment Claim was assigned Claim # 9519699.¹⁶ The Claimant has been offered final payment from the RP/GCCF, in the amount of \$5,000.00.¹⁷ As of the date of this determination, the Claimant has not accepted the final payment offer.¹⁸

In order to prove a claim for loss of profits and impairment of earning capacity damages, a Claimant must provide documentation sufficient to establish (1) that the claimant sustained a financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. Furthermore, the amount of compensation a Claimant may receive is limited to “the actual net reduction or loss of earnings or profits suffered”¹⁹ and must clearly reflect adjustments for “all income resulting from the incident”²⁰ and “potential income from alternative employment or business not undertaken but reasonably available.”²¹

As noted above, Claimant was hired to work at Gulf Coast Seafood Deli on 5 May 2008, and was laid off on 1 August 2010.²² The Claimant presented a letter from her employer stating that she

⁷ Response to NPFC request for additional information, received on 18 January 2012.

⁸ GCCF United States Coast Guard Report, 23 January 2012.

⁹ GCCF United States Coast Guard Report, 23 January 2012.

¹⁰ GCCF United States Coast Guard Report, 23 January 2012.

¹¹ GCCF United States Coast Guard Report, 23 January 2012.

¹² GCCF United States Coast Guard Report, 23 January 2012.

¹³ GCCF United States Coast Guard Report.

¹⁴ Letter from the Claimant to the NPFC, 16 December 2011.

¹⁵ GCCF United States Coast Guard Report, 23 January 2012.

¹⁶ GCCF United States Coast Guard Report, 23 January 2012.

¹⁷ GCCF Claimant Status, accessed on 23 January 2012.

¹⁸ GCCF Claimant Status, accessed on 23 January 2012.

¹⁹ 33 C.F.R. § 136.235.

²⁰ 33 C.F.R. § 136.235(a).

²¹ 33 C.F.R. § 136.235(c).

²² Record of the Claimant's earnings, 01/08/2009 to /8/05/2010.

was laid off as a result of slow business following the Deepwater Horizon oil spill. The NPFC contacted the Claimant's former employer, who stated that the Claimant was laid off due to business losses following the oil spill.²³ He further stated that business has not fully recovered due to public perception that Gulf Coast seafood is unsafe.²⁴ Although the Claimant's former employer stated that he is still unable to rehire the Claimant to work full-time, the Claimant would have the option of returning to work part-time, if she so desired.²⁵

The NPFC denied the claim originally on January 25, 2012 because (1) payments made by the RP/GCCF, fully compensated the Claimant for any alleged losses, and (2) the Claimant failed to provide evidence to demonstrate that her continued unemployment throughout 2011, was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

1. Payments made by BP and the GCCF has fully compensated the Claimant for alleged losses.

Financial documentation provided by the Claimant indicated that in 2009, when the Claimant worked full-time at the Seafood Deli, the Claimant earned total wages of \$17,590.00.²⁶ From January to August, 2010 the Claimant earned wages of \$13,860.00.²⁷ Throughout the remainder of 2010, and in 2011, the Claimant received compensation totaling \$25,200.20 from BP and the GCCF.²⁸ Therefore, over the years 2010 and 2011, the Claimant received total income of \$39,060.20. This is more than double the Claimant's wage earnings in either 2008 or 2009.

Because the Claimant's 2010 wages in addition to payments made to the Claimant by BP and the GCCF, totaled more than two years of earnings, based on the Claimant's pre-oil spill income, the NPFC determined that the Claimant has been fully compensated for any loss of wages allegedly sustained in 2010 and 2011, as a result of the Deepwater Horizon oil spill.

1. The Claimant has not provided evidence to prove that her inability to secure employment was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In the Claimant's original submission to the NPFC, the Claimant stated, "I've tried to find another job, but the economy is so bad, I have not been able to find one."²⁹ The NPFC notes that in addition to the Claimant providing evidence sufficient to prove that her initial lay-off was caused by the discharge of oil resulting from the Deepwater Horizon oil spill, the Claimant must provide evidence sufficient to prove that her continued unemployment throughout 2011, has also been a result of the discharge of oil caused by the Deepwater Horizon oil spill, and not the result of other factors, such as inaction by the Claimant, or general economic conditions. Furthermore, any compensation potentially available to the Claimant from the Fund, must be reduced by the amount the Claimant could have earned from reasonably available employment, as noted in 33 C.F.R. 136.235(c).³⁰

²³ PHONECON: NPFC Staff and Owner, Gulf Coast Seafood Deli, 20 January 2012.

²⁴ PHONECON: NPFC Staff and Owner, Gulf Coast Seafood Deli, 20 January 2012.

²⁵ PHONECON: NPFC Staff and Owner, Gulf Coast Seafood Deli, 20 January 2012.

²⁶ 2008, 2009, Form 1040s.

²⁷ 2010 Form 1040.

²⁸ GCCF United States Coast Guard Report, 23 January 2012.

²⁹ Optional OSLTF Claim Form, signed on 16 December 2011.

³⁰ Regulations require that adjustments for compensation should clearly reflect, "potential income from alternative employment or business not undertaken, but reasonably available."

Based on the foregoing, this claim was denied because (1) payments made to the Claimant by the RP have fully compensated the Claimant for any losses allegedly incurred in 2010 or 2011, and (2) the Claimant has failed to provide evidence sufficient to prove that her unemployment throughout 2011 was caused by the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

REQUEST FOR RECONSIDERATION:

On February 3, 2012, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim. On this date the Claimant sent two emails to the NPFC. One email was entitled "Seeking Employment" which had an attachment that identified 23 locations that the Claimant sought employment from and the other email officially requested reconsideration. The Claimant stated that the new information for consideration consisted of a list of places she sought employment from, a letter from her previous employer that stated they financially could not bring the Claimant back to work and that the employer's loss and decline in business was due to the oil spill along with a statement that the employer tried to keep the Claimant employed as long as they could before letting her go. The Claimant's previous employer, Gulf Coast Seafood deli also sent an email to the NPFC on February 3, 2012, that stated the Claimant worked for them for several years prior to the oil spill. The employer went on to say that in the beginning, the deli's business did not decline like the seafood retail markets did but after several months, they started to notice a decline in sales and ultimately they let the Claimant go. The employer also stated if the GCCF would pay them what they feel they are owed then they could possibly offer the Claimant a part time job but with the business the way it is currently, they really have no need for her.

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).

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

Upon review of all of the Claimant's information, the Claimant did not produce the necessary documentation that would persuade the NPFC to change its original denial determination. While the Claimant produced a listing of 23 locations from which she sought employment, there was no information indicating why any of the employers opted not to hire the Claimant; therefore, the NPFC cannot determine that her failure to be hired by the any of the listed businesses was due to the discharge of oil as opposed to other reasons, i.e., such as no openings or the overall economic conditions in the area that could prevent them from offering the Claimant employment.

Claimant asserted that she was underpaid by the RP/GCCF in the amount of \$7,644.02 because she alleged that she would have made a salary of \$23,920.00 in 2011. A letter dated January 31, 2012 from her previous employer stated that the Claimant would have made a total of \$47,840.00 for 2010 and 2011; however, there is no evidence to support that statement. In fact

Claimant's statement that she was not hired by other potential employers "due to the economy" refutes the statement that her salary would have remained at \$23,920 for 2011. Also, the employer admitted to reducing the Claimant's salary by \$50 per week sometime in June 2010 due to a decline in business resulting from the oil spill there is no evidence in the record to substantiate that assertion.

Furthermore and as originally stated in the NPFC's initial denial determination dated January 25, 2012, the Claimant's financial income tax documentation demonstrated that the Claimant made \$18,973.00 in 2008, \$17,590.00 in 2009 and \$25,260.00 in 2010. If the employer had not reduced the Claimant's salary by \$50 per week starting in June 2010, the most she would have made would have been \$23,920.00. Thus, the Claimant grossed more in 2010 than she would have absent the oil spill. The NPFC has determined that the Claimant has been fully compensated by the RP/GCCF for any alleged losses experienced.

The Claimant has again failed to demonstrate that she suffered a loss in the amount of \$7,644.02 or that her 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.

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

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *2/13/12*

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
2/13/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6586

Rebekah Patti
[REDACTED]

RE: Claim Number: N10036-1612

Dear Ms. Patti:

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 N10036-1612 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