

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 9228

5890/DWHZ
26 March 2012

Leo Muller
[REDACTED]

Re: Claim Number: N10036-1629

Dear Mr. Muller:

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 N10036-1629 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 N10036-1629.

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	N10036-1629
Claimant	Leo Muller
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,600.00

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 05 January 2012, Leo Muller (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$12,600.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a mechanic who performs metal and mechanical work in Kenner, Louisiana.¹ The Claimant worked at Jay's Body Shop, Inc. in 2008 and 2009,² but worked at Banner Chevrolet and Ray Brandt Hyundai, in addition to Jay's Body Shop, in 2010.³ The Claimant asserted that he is solely paid on commission and, due to the Deepwater Horizon oil spill, there was less work available and he had to switch jobs.⁴

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

¹ Letter from the Claimant to "whom it may concern," dated 17 December 2011.

² 2009 and 2009 Form W-2's from Jay's Body Shop, Inc.

³ 2010 Form W-2's from Jays Body Shop Inc, Banner Chevrolet, and Ray Brandt Hyundai of Metairie.

⁴ Optional OSLTF Claim Form, dated 011 December 2011.

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.
- (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 the claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 011 December 2011;
- 2010 Form 1040 U.S. Individual Income Tax Return;
- 2010 Form W-2 Wage and Tax Statement's from Banner Chevrolet, Ray Brandt Hyundai of Metairie, and Jay's Body Shop, Inc.;
- 2009 Form 1040 U.S. Individual Income Tax Return;

- 2009 Form W-2 Wage and Tax Statement from Jay's Body Shop, Inc.;
- 2008 Form 1040 U.S. Individual Income Tax Return;
- 2008 Form W-2 Wage and Tax Statement from Jay's Body Shop, Inc.; and
- Letter from the Claimant to "whom it may concern," dated 17 December 2011.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings in the amount of \$12,600.00 on 20 October 2010.⁵ The Claimant was assigned Claimant ID # 3239559 and Claim # 294898. This claim was denied by the GCCF on 04 November 2010.⁶ Additionally, the Claimant filed a Full Review Final (FRF) claim with the GCCF for loss of earnings on 09 February 2011 in the amount of \$12,600.00.⁷ He was assigned Claim # 9283323. This claim was denied by the GCCF on 15 April 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill the Claimant lost earnings as a mechanic. The NPFC deems that the Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1629 considers and addresses the losses claimed in the claims presented to the responsible party, specifically Claim #'s 294898 (EAP) and 9283323 (FRF).

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 failed to prove he experienced a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that he worked as a mechanic on commission and, due to the Deepwater Horizon oil spill, there was less work available which resulted in a loss of earnings.⁹ The Claimant's submission to the NPFC consisted solely of personal tax documentation from the years 2008 through 2010. On 06 January 2012, the NPFC requested that the Claimant provide additional information to substantiate his claim and provide a connection between his alleged loss and the Deepwater Horizon oil spill. The NPFC requested that the Claimant provide, among other things, a letter from his employer describing how the Deepwater Horizon oil spill affected the company and the Claimant's earnings, paystubs from his three jobs in 2010, and requested that the Claimant answer several questions regarding his employment as a mechanic and his alleged loss.

On 16 February 2012, the NPFC spoke with the Claimant on the phone. The Claimant initially stated that he had already provided all the information he had. The NPFC informed the Claimant that the additional information requested by the NPFC was necessary to provide a connection

⁵ Report from the GCCF, dated 16 February 2012.

⁶ Denial letter from the GCCF, dated 04 November 2010.

⁷ Report from the GCCF, dated 16 February 2012.

⁸ Determination Letter on Interim Payment/Final Payment Claim, dated 15 April 2011.

⁹ Optional OSLTF Claim Form, dated 011 December 2011.

between his loss and the Deepwater Horizon oil spill.¹⁰ The Claimant stated that he needed additional time to provide further documentation. The NPFC informed the Claimant that if he needed more time then he had to request an extension in writing.¹¹ To date, the NPFC has not received a written request for an extension nor any other additional documentation to substantiate his alleged loss. Consequently, the Claimant has failed to prove that he has suffered a loss as a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his 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 Review: *3/26/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁰ PHONECON between the NPFC and the Claimant on 16 February 2012.

¹¹ PHONECON between the NPFC and the Claimant on 16 February 2012.