

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
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8610

5890/DWHZ
11 January 2012

Ms. Ashley Ford


Re: Claim Number: N10036-1630

Dear Ms. Ford:

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 N10036-1630 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 N10036-1630.

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 | N10036-1630 |
| Claimant | Ashley Ford |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earning Capacity |
| Amount Requested | \$56,000.00 |

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 5 January 2012, Ms. Ashley Ford (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$56,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon oil spill, the Claimant alleged to have been working as a stylist at The Shores Salon of Destin.² The Claimant alleged that she had been working at the salon since 2008.³ The Claimant provided signed tax returns confirming her employment at the salon in 2009, and indicating that in that year, she earned profits of \$43,550.00.⁴ The Claimant also provided a notarized letter, signed by the alleged owner of the salon, stating that the salon had closed following the Deepwater Horizon oil spill, causing the Claimant to lose her position.⁵

The notarized letter stated, “[t]his letter is to confirm that your position as a stylist is being eliminated as a result of the Deepwater Horizon Incident on April 20, 2010.”⁶

The Claimant seeks \$56,000.00 from the OSLTF in income lost due to the loss of her position following the closure of the salon, allegedly caused by the Deepwater Horizon oil spill.⁷

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

¹ Optional OSLTF Claim Form, received on 5 January 2012.

² 2009 Schedule C (Form 1040).

³ PHONECON: NPFC Staff and the Claimant, 6 January 2012.

⁴ 2009 Schedule C (Form 1040).

⁵ Notarized letter from the Shore Salon of Destin, dated 26 April 2010.

⁶ Notarized letter from the Shore Salon of Destin, dated 26 April 2010.

⁷ Optional OSLTF Claim Form, received on 5 January 2012.

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.
- (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, received on 5 January 2012;
- 2009 Form 1040, showing adjusted gross income of \$40,473.00;
- 2009 Schedule C (Form 1040) showing gross sales of \$57,450 and net profit of \$43,550.00;
- 2010 Form 1040, showing adjusted gross income of \$26,881.00;
- 2010 Schedule C (Form 1040) showing gross sales of \$37,900.00 and net profit of \$28,925.00;
- Letter from the Claimant to the NPFC, describing losses, 5 December 2011;
- Notarized letter from the Shore Salon of Destin, dated 26 April 2010;
- BBC News, *Gulf of Mexico oil spill*, 5 May 2010;

- Fax Cover Sheet, 4 January 2012.

Prior to presentment of this claim to the NPFC, the Claimant submitted an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of earnings or profits damages. The Claimant was assigned Claimant ID # 3304152 and the EAP claim was assigned Claim # 362738.⁸ This claim was paid in the amount of \$26,000.00 on 22 November 2010.⁹

The Claimant also submitted a Quick Pay final payment claim. The Quick Pay was assigned Claim # 9298775 was paid by the RP/GCCF.¹⁰ In a letter dated 16 February 2011, the RP/GCCF reclassified the claimant as a “business claimant” for the purposes of Quick Pay payment.¹¹

Information available to the NPFC therefore indicates that the Claimant has been paid a total of \$26,000.00 plus the undetermined Quick Pay final payment amount.¹²

On 5 January 2012, the Claimant submitted this claim to the NPFC, seeking loss of profits damages in the amount of \$56,000.00.¹³ The NPFC may adjudicate this claim to the extent that the damages now before the NPFC were first presented to the RP/GCCF. Any damage amount now before the NPFC, which exceeds the amount presented to the RP/GCCF, is denied for improper presentment.¹⁴

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.

This claim is denied because (1) the Claimant has materially misrepresented substantial elements of this claim in an attempt to secure funds from the Federal Government, and (2) the Claimant has accepted a Quick Pay final payment, waiving and releasing all rights regarding this injury to the RP/GCCF.

1. Material Misrepresentation.

In attempting to verify alleged damages presented in this claim, the NPFC contacted the salon where the Claimant alleged to have been employed. In a conversation with the NPFC, the Claimant stated that she had worked at the salon since 2008.¹⁵ However, the owner of the salon indicated that she had owned the salon for 18 years, and did not know the Claimant.¹⁶ Furthermore, the owner confirmed that the person who had provided the letter in the Claimant’s submission was not the owner of the salon.¹⁷ Additionally contrary to the information contained

⁸ GCCF Claimant Status, accessed on 6 January 2012.

⁹ GCCF Notice of Determination, Emergency Advance Payment, 22 November 2011.

¹⁰ GCCF Claimant Status, accessed on 6 January 2012.

¹¹ GCCF Claimant Status, accessed on 6 January 2012.

¹² GCCF Claimant Status, accessed on 6 January 2012.

¹³ Optional OSLTF Claim form, received on 5 January 2012.

¹⁴ 33 C.F.R. § 136.103(a).

¹⁵ PHONECON: NPFC Staff and the Claimant, 6 January 2012.

¹⁶ Email from the salon to the NPFC, 6 January 2012.

¹⁷ Email from the salon to the NPFC, 6 January 2012.

in the notarized letter provided by the Claimant, the salon did not close following the oil spill and remains in business.¹⁸

Furthermore, signed federal tax returns presented by the Claimant, prepared by Clarks Mobile Tax Agency, LLC appear to contain inaccurate information. The NPFC attempted to contact two phone numbers listed for the tax agency, but both were disconnected.¹⁹

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 may be subject to civil penalty for each claim.

2. Release of Rights to the RP/GCCF.

Additionally, information available to the NPFC indicates that the Claimant has received an Emergency Advance Payment totaling \$26,000.00 and Quick Pay final payment for an unknown amount.²⁰ The RP/GCCF requires that a Claimant execute a Release and Covenant Not to Sue in return for a Quick Pay final payment.²¹ Because the Claimant has accepted a Quick Pay final payment, the Claimant has likely released any rights to additional recovery regarding this injury to the RP/GCCF.²²

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP. If these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the Fund.

This claim is denied because (1) the Claimant has materially misrepresented substantial elements of this claim in order to try to obtain funds from the Federal Government under false pretenses, and (2) the Claimant has accepted a Quick Pay final payment, releasing all rights regarding this injury to the RP/GCCF.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *1/11/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁸ PHONECON: NPFC Staff and salon staff, 6 January 2012.

¹⁹ Clarks Mobile Tax Agency, LLC: 850-200-0334; 850-855-1087.

²⁰ Letter from the GCCF to the Claimant, dated 15 February 2011, available via GCCF Claimant Status, accessed on 6 January 2012..

²¹ Letter from the GCCF to the Claimant, dated 15 February 2011, available via GCCF Claimant Status, accessed on 6 January 2012.

²² A letter from the GCCF to the Claimant, dated 15 February 2011, states that "You must fill out this form and sign both the Acknowledgement and the Release and Covenant Not to Sue [in order to receive final payment]." The GCCF Claimant Status indicates that the Claimant has received Quick Pay payment, indicating that the Claimant has executed a Release and Covenant Not to Sue. Accessed 6 January 2012.