

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1634
Claimant	: Frederick Manuel
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$85,000.00

### **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 claims for certain individual and business claims on behalf of BP.

### **CLAIM AND CLAIMANT:**

On 10 January 2012, Frederick Manuel, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$85,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the Deepwater Horizon oil spill, the Claimant was employed as a pipe technician through Labor Finders, Inc. (LFI), a temporary employment agency in Theodore, Alabama.<sup>2</sup> LFI placed the Claimant with Pipeline Induction Heat, Inc. beginning 13 July 2008.<sup>3</sup> Pipeline Induction Heat applies coatings to pipes for Technip USA Inc., (Technip) at its plant in Theodore, Alabama. Technip builds pipeline systems for deep-sea oil projects in the Gulf of Mexico.<sup>4</sup> The Claimant asserted that he was laid-off on 16 May 2010 due to the Deepwater Horizon oil spill.<sup>5</sup> After being laid-off, the Claimant worked with Ashland Services, an oil-spill cleanup contractor for a couple of months and received unemployment from the State of Alabama.<sup>6</sup>

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 10 October 2010 in the amount of \$50,000.00.<sup>7</sup> He was assigned GCCF Claimant ID # 3139159 and GCCF Claim # 194002. The

---

<sup>1</sup> The Claimant's original Optional OSLTF form denoted damages of \$25,000.00 for subsistence use, \$50,000 for natural resources, and \$50,000.00 for loss of profits and earnings capacity. On 9 January 2012, the NPFC contacted the Claimant via phone to request that he clarify his sum certain and claimed damages. The Claimant faxed the NPFC a signed letter on 9 January 2012 revising his claim damages to \$85,000.00 for "losses stemming from the 2010 Deepwater Horizon Oil Spill Disaster." The NPFC again contacted the Claimant for clarification of his claimed damages on 11 January 2012 – the Claimant stated that his sole claim to the NPFC is for loss of profits and impairment of earning capacity in the amount of \$85,000.00.

<sup>2</sup> Optional OSLTF Form, dated 28 October 2011.

<sup>3</sup> PHONECON between the NPFC and LFI on 21 February 2012.

<sup>4</sup> See copies of Technip industry information submitted to GCCF in admin record

<sup>5</sup> Optional OSLTF Form, dated 28 October 2011.

<sup>6</sup> Optional OSLTF Form, dated 28 October 2011.

<sup>7</sup> Report from the GCCF, dated 21 February 2012.

EAP claim was denied by the GCCF on 29 November 2010.<sup>8</sup> The Claimant also filed a Full Review Final Payment (FRF) claim for loss of earnings on 2 January 2011 in the amount of \$50,000.00.<sup>9</sup> He was assigned GCCF Claim # 9102404; this claim is currently under Re-Review by the GCCF.<sup>10</sup>

### **REQUEST FOR RECONSIDERATION:**

On May 1, 2012, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on March 2, 2012 on the basis that under 33 C.F.R. § 136.103(a), except for limited exceptions not applicable to the Claimant, all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an Emergency Advance payment claim for \$50,000.00 for loss of earnings and then, after the EAP claim was denied, he submitted a Full Review Final Payment claim for loss of earnings in the amount of \$50,000.00. Claimant then presented a loss of profits and impairment of earnings capacity claim to the NPFC seeking damages in the amount of \$85,000.00. Any claimed amount of damages exceeding \$50,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and was denied.

The remainder of the claim was denied because the Claimant failed to prove that his alleged financial loss was due to the Deepwater Horizon oil spill. In his claim submission to the NPFC, the Claimant asserted that he was laid-off for lack of work at LFI due to the Deepwater Horizon oil spill. On 21 February 2012, the NPFC contacted Crystal Hanna Williams, Office Manager for LFI in Theodore, Alabama, who verified that the Claimant was employed as needed by Pipeline Induction Heat. Ms. Williams further elaborated that the Claimant was laid-off on 15 May 2010 because of the moratorium on off-shore drilling.<sup>11</sup> Consequently, the Claimant failed to prove his alleged loss was a result of the Deepwater Horizon oil spill as opposed to other factors such as permitting delays and the drilling moratorium, which are considered intervening causes and thus not a consequence of the oil spill.

Accordingly, this claim was denied because the Claimant failed to meet his burden to: (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), and (2) demonstrate that his alleged loss was 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.

### **RECONSIDERATION CLAIM ANALYSIS:**

The Claimant requested reconsideration which was received by the NPFC on May 1, 2012. The Claimant provided a one-page letter that requested his claim be reconsidered and the Claimant requested a 60-day extension of time to receive answers to two questions he posed in his reconsideration letter. Additionally, the Claimant stated he felt like he had additional documentation to substantiate his claim but failed to provide any such documentation with his request for reconsideration by his 60 day deadline of May 2, 2012.

### **NPFC Determination on Reconsideration**

---

<sup>8</sup> EAP Denial Letter from the GCCF, dated 29 November 2010.

<sup>9</sup> Report from the GCCF, dated 21 February 2012.

<sup>10</sup> Report from the GCCF, dated 21 February 2012.

<sup>11</sup> PHONECON between the NPFC and Labor Finders on 21 February 2012.

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.

The request for reconsideration was a one-page letter with two questions. The Claimant's request states ... "I have read my Determination letter thoroughly from the NPFC and there is one clause that I do not thoroughly understand; which is Under 33 CFR 136.103(a) whereas the amount of damages exceeded the amount that was presented to the RP. Does that mean that the same amount presented to the RP has to be the same amount to the NPFC?" and the second question posed was ... "Should I in fact re-submit my claim to the RP before the NPFC can reconsider?"

On May 2, 2012, upon receipt of the request for reconsideration and the 60-day request for extension, the NPFC called the Claimant and left a message that the request for a 60-day extension on his reconsideration is denied because the Claimant waited until the day before his 60-day time limit to request reconsideration and the Claimant failed to demonstrate that he had already requested information from a third party source which would have supported the need for additional time.

Regarding the Claimant's first question on reconsideration of whether the Claimant should re-submit a claim to the RP before the NPFC can reconsider this claim, the NPFC offers that the Claimant can only pursue this claim with the NPFC in the amount of \$50,000.00 since that was the amount previously presented to the RP.

On May 3, 2012, the Claimant faxed an additional nine (9) pages of documentation in support of his request for reconsideration. While the additional documentation was not presented to the NPFC in a timely fashion the NPFC reviewed it and identified the following:

- One Page letter dated May 3, 2012 whereby the Claimant changes his sum certain from \$85,000.00 to \$50,000.00 so that he is in line with what he has previously presented to the RP;
- Duplicate letters from Labor Finders dated April 26, 2011 and November 14, 2001, respectively; and
- Copy of the May 30, 2010 implementation of the Moratorium on Drilling NTL No. 2010-N04.

The Claimant asserted in his letter that the employer's statement that the Claimant was laid off as a result of the moratorium on drilling is erroneous. While the Claimant is in disagreement with what Ms. Williams of LFI stated to the NPFC, he has not provided documented evidence from the employer that contradicts the information provided to the NPFC as to the reason for the Claimant's lay off; therefore, the NPFC's original determination stands. The Claimant has failed to demonstrate any loss he may have sustained was the result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil as opposed to other intervening causes such as the moratorium on off-shore drilling as stated by the employer.

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

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *5/16/12*

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

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:  
[REDACTED]@uscg.mil  
Fax: 703-872-6113

5890  
5/16/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4803 7544

Frederick Manuel  
[REDACTED]

RE: Claim Number: N10036-1634

Dear Mr. Manuel:

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 N10036-1634 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

Encl: Claim Summary / Determination Form