

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
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3763

5890/DWHZ
22 May 2012

Tina Daniels


Re: Claim Number: N10036-1688

Dear Ms. Daniels:

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 N10036-1688 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 N10036-1688.

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	N10036-1688
Claimant	Tina Daniels
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,000.00

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 22 February 2012, Tina Daniels (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$15,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant worked for Bayou Pipe Company (Bayou) performing pipe traceability work in New Iberia, Louisiana.¹ Bayou provides “steel pipe coating and welding services” for “onshore and offshore fabrication.”² The Claimant asserted that, after the Deepwater Horizon oil spill occurred, the workload at Bayou decreased, all overtime hours were cut, and she was forced to take days off at times.³ The Claimant indicated that this downturn in work at Bayou continued until she was ultimately laid off in August of 2011.⁴

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).

¹ Answer 1, Claimant’s Written Responses to the NPFC’s Requested Information, received on 01 May 2012.

² <http://www.bayoucompanies.com/>; accessed by the NPFC on 16 May 2012.

³ Answer 1, Claimant’s Written Responses to the NPFC’s Requested Information, received on 01 May 2012.

⁴ Answer 2, Claimant’s Written Responses to the NPFC’s Requested Information, received on 01 May 2012.

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 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 her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 08 February 2011 [sic];
- Denial Letter on Interim Payment/Final Payment Claim, dated 23 December 2011;

- Claimant's Written Responses to the NPFC's Requested Information, received on 01 May 2012;
- Payroll Register Detail Report from The Bayou Companies, Inc. for the pay period 12/20/09 through 09/04/11.
- Records of Unemployment Benefits for the period: 28 August 2011 through 07 April 2012; and
- Federal Individual Income Tax Returns for 2008, 2009, 2010, and 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim I (ICQ12011) claim with the GCCF for loss of earnings in the amount of \$5,000.00 on 04 November 2010.⁵ The Claimant was assigned Claimant ID # 3494518 and Claim # 9269238. The Claimant also filed an Interim IV (ICQ42011) claim with the GCCF for loss of earnings on 17 November 2011; she was assigned Claim # 9538389.⁶ Both of these claims were denied by the GCCF.⁷

Based upon the evidence provided by Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of her claim before the NPFC i.e. that the Claimant lost earnings at Bayou due to the Deepwater Horizon oil spill. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC, to the extent the damages to the NPFC were presented to the GCCF.⁸ Accordingly, this Claim Summary Determination for NPFC Claim N10036-1688 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 9269238 (ICQ12011) and 9538389 (ICQ42011).

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.

The Claimant asserted that her work hours were reduced and, eventually, her employment at Bayou was terminated due to the Deepwater Horizon oil spill.⁹ The Claimant's initial submission to the NPFC consisted solely of an OSLTF claim form and a GCCF denial letter. On 19 March 2012, the NPFC requested that the Claimant provide additional information to substantiate her claim; the requested information included paystubs, tax returns, and a letter from her employer explaining how her loss was due to the Deepwater Horizon oil spill. On 01 May 2012, the Claimant provided all the requested financial information, yet the Claimant did not provide the letter from her employer (Bayou) to support her claim.

Nevertheless, the NPFC contacted Bayou directly to confirm the Claimant's assertions and obtain information linking her alleged loss to the Deepwater Horizon oil spill. Bayou confirmed that the Claimant was laid off in 2011 and that this layoff was connected to the Deepwater

⁵ Report from the Transition Program, dated 01 May 2012.

⁶ Report from the Transition Program, dated 01 May 2012.

⁷ Report from the Transition Program, dated 01 May 2012.

⁸ The NPFC notes that the Report from the Transition Program did not provide the claimed amount of damages for the Claimant's Interim IV claim.

⁹ Answer 1, Claimant's Written Responses to the NPFC's Requested Information, received on 01 May 2012.

Horizon oil spill.¹⁰ When asked specifically how the company was affected by the oil spill, Bayou confirmed that the moratorium on drilling had a significant impact on the company.¹¹ Bayou explained that the company provides piping that is used for drilling by a lot of oil companies, including BP; if the companies aren't drilling then they don't need Bayou's services.¹² Consequently, the Claimant failed to prove her 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.

Based on the foregoing, this claim is denied because the Claimant failed to meet her 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: *5/22/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁰ PHONECON between Bayou and the NPFC on 15 May 2012.

¹¹ PHONECON between Bayou and the NPFC on 15 May 2012.

¹² PHONECON between Bayou and the NPFC on 15 May 2012.