

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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Arlington, VA 20598-7100
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5890

1 May 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4517

Jackie Hudson
c/o Vance, Lotane & Bookhardt, P.A.
Attn: Arthur S. Barksdale, IV
1980 Michigan Avenue
Cocoa FL 32922

RE: Claim Number: N10036-1696

Dear Mr. Barksdale:

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 N10036-1696 involving Deepwater Horizon. 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 N10036-1696.

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: (1) Claim Summary / Determination Form
(2) Documentation Provided by the Claimant

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Certified Mail Number: 7011 1570 0001 2446 4524

Jackie L. Hudson


CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1696
Claimant	: Jackie L. Hudson
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$8,495.72

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 24 February 2012, Arthur S. Barksdale, Esq., on behalf of Jackie L. Hudson ('jointly referred to as the 'Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,495.72 for loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹ The Claimant is a part-time job site superintendent who asserts lost earnings due to the oil spill.²

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 Section 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 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.

¹ Letter dated 24 February 2012 from the Claimant's attorney to the NPFC.

² Claimant's signed, but undated letter "To Whom It May Concern".

- (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

On 24 February 2012, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$26,308.09 in loss of profits and impairment of earnings capacity in 2010 resulting from the Deepwater Horizon oil spill.³ On 18 April 2012, the Claimant revised the sum certain to \$8,495.72.⁴ This loss is associated with the Claimant's lost earnings due to the oil spill while a part-time job site superintendent. The Claimant states that his part-time income was lost in 2010 due to a halt in the construction business by the effects of the oil spill.⁵ The Claimant indicated that he submitted a claim the GCCF and that the claim was denied.⁶

To support this claim the Claimant presented a large amount of documentation, which is listed in Enclosure (2).

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed presentment of a Full Review Final Payment (FRP) Claim to the GCCF on 10 October 2011 in the amount of \$26,308.09.⁷ The NPFC also confirmed that the GCCF assigned Claimant Identification No. 1635930 and Claim No. 9523202 to the claim, as well as that the GCCF had denied the claim.⁸

Based upon the information provided and independent verification by the NPFC, this claim can be adjudicated in the full amount of damages presented to the NPFC, \$8,495.72. Further, because the subject matter of the Claimant's FRF Claim before the GCCF and because this claim appears to be based upon the same subject matter, i.e. that the Claimant lost income as a result of the Deepwater Horizon oil spill, the NPFC deems this Claim Summary Determination as being

³ Letter dated 24 February 2012 from the Claimant's attorney to the NPFC.

⁴ Email dated 18 April 2012 from the Claimant to the NPFC.

⁵ Claimant's email dated 13 March 2012.

⁶ Letter dated 24 February 2012 from the Claimant's attorney to the NPFC.

⁷ GCCF – U.S. Coast Guard Report as of 12 April 2012.

⁸ GCCF – U.S. Coast Guard Report as of 12 April 2012.

outcome determinative for the Claimant's GCCF claim for loss of income in the amount of \$26,308.09.

NPFC Determination

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 that the alleged loss was due to the Deepwater Horizon oil spill.

After an initial review of the submission, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 28 February 2012.⁹

On 13 March 2012, the Claimant responded in part to the information request by providing a letter from his employer, his 2011 Form W-2 and a new Lost Earnings/Income Worksheet.¹⁰ The Claimant also explained that he does not have his 2011 tax return, that he did not keep paystubs, that the construction business was halted due to effects of the oil spill and fear of falling property values, and that he did not receive a W-2 in 2010. The NPFC has considered all documentation and information presented by the Claimant. On 18 April 2012, the Claimant confirmed that the sum certain for the claim was revised to \$8,495.72.¹¹

Failure to Prove Causation

The NPFC requested that the Claimant provide evidence or documentation that would indicate that damages claimed were caused by the Deepwater Horizon oil spill. The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven the Claimant. Here, the Claimant has asserted that his loss in income was due to a reduction in earnings in 2010, caused by effects of the Deepwater Horizon oil spill and fear of falling property values.¹²

The Claimant provided a letter from his employer, which stated, "... when the oil spill occurred in 2010 my business went downhill. Therefore, I did not have any jobs to work and I was not able to work Jackie L. Hudson and pay him any wages. [He] did not make any W-2 wages in 2010. Jackie Hudson is a Superintendent that oversees the job site."¹³ The employer also stated, "My company was granted compensated from the Gulf Coast Claims Facility for lost wages."¹⁴

Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill. If the Claimant submits a request for Reconsideration to the NPFC,

⁹ NPFC letter dated 28 February 2012.

¹⁰ Email from the Claimant to the NPFC dated 13 March 2012.

¹¹ Email dated 18 April 2012 from the Claimant to the NPFC.

¹² Email from Claimant dated 13 March 2012.

¹³ Letter from Kenneth Hudson, 'To Whom It May Concern', dated 22 January 2012.

¹⁴ Letter from Kenneth Hudson, 'To Whom It May Concern', dated 22 January 2012.

evidence linking his loss and the loss of his employer to the Deepwater Horizon oil spill must be submitted in order for his claim to be successful.

This claim is denied for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim; and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/1/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

Documentation Provided by the Claimant:

- Unsigned claim letter received 24 February 2012.
- Copy of Claimant's authorization dated 9 February 2012 for Vance, Lotane & Bookhardt, PA, to act on his behalf concerning claim at the NPFC.
- Email dated 24 February 2012, forwarding Jackie Hudson claim to the NPFC.
- Worksheet for Lost Earnings/Income, dated 2 October 2011, for Jackie Lee Hudson.
- GCCF Deficiency Letter dated 1 December 2011.
- Claimant's Florida Driver License, issued 20 October 2010.
- Claimant's undated letter, To Whom It May Concern, describing effects of the BP oil spill on Claimant.
- 2008 Federal Income Tax Return, Form 1040 (joint), with Schedules B & E and Form 8903, Wachovia 1099-INT, church contribution record, Schedule K-1 with forwarding letter, Form W-2 from Kenneth Hudson Contractors, Inc., Forms SSA-1099 for Jackie L. Hudson and Shirley A. Hudson, Form 1099-INT for Jackie L. Hudson from Peoples First Community Bank, Form 1099-R for Shirley Hudson from TJX Companies, Inc. and two Form 1099-Rs for Shirley Hudson from Union Bank of California.
- 2009 Federal Income Tax Return, Form 1040 (joint), with Schedules B, E & K-1 (with forwarding letter), Wachovia 1099-INT, tax information for Shirley Hudson from TJX Companies, Inc., church contribution record, Form 1099-INTs for Jackie L. Hudson and Shirley C. Hudson from Peoples First Community Bank, Forms SSA-1099 for Jackie L. Hudson and Shirley A. Hudson, Form W-2 from Kenneth Hudson Contractors, Inc., and Form 1099-R for Shirley Hudson from TJX Companies, Inc.
- 2010 Federal Income Tax Return, Form 1040 (single), with church contribution record, Forms SSA-1099 for Jackie L. Hudson and Shirley A. Hudson, Form 1099-R for Shirley Hudson from TJX Companies, Inc., and Form 1099-R for Shirley Hudson from Hancock Bank.
- Attorney authorization form for Troy R. Lotane to represent claimant before the GCCF.
- GCCF Full Review Final Payment Claim Form dated 25 August 2011 (14 pages).
- GCCF Deficiency Denial Letter dated 18 January 2012.
- Email from Claimant dated 13 March 2012.
- Letter from Kenneth Hudson of Kenneth Hudson Contractors, Inc. dated 22 January 2012.
- 2011 Form W-2 for Jackie L. Hudson from Kenneth Hudson Contractors, Inc.
- Worksheet for Lost Earnings/Income, dated 13 April 2012, for Jackie Hudson.