

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: 1-800-280-7118
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3459

5890/DWHZ
30 April 2012

Vance, Lotane, Bookhardt, PA
Attn: Arthur Barksdale IV, Esq
1980 Michigan Ave
Cocoa, FL 32922

Re: Claim Number: N10036-1698

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 your claim number N10036-1698 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 N10036-1698.

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

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3466

Angela Jones-Pyles



CLAIM SUMMARY/DETERMINATION FORM

Claim Number N10036-1698
Claimant Angela Jones-Pyles
Type of Claimant Personal
Type of Claim Loss of Profits and Impairment of Earnings Capacity
Amount Requested \$46,880.29

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 29 February 2012, Arthur S. Barksdale IV, Esq., on behalf of Ms. Angela Jones-Pyles (the Claimant), presented a claim to the National Pollution Funds Center (NPFC) seeking \$46,880.29 for loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.¹

The Claimant allegedly worked for Bruce Camacho Bail Bonds from April 2009 to May 2010.² The Claimant asserts that as a result of the Deepwater Horizon oil spill, “the bail bonds business dropped so dramatically that Bruce [her employer] had to let his entire staff go” and consequently she was laid off from her alleged position at Bruce Camacho Bail Bonds.³ The Claimant also alleged despite actively pursuing new employment, she has been unemployed since May 2010 with the exception of mowing “some lawns here and there”, working for four months as a mover for Northern Van Lines, and babysitting neighbors’ children.^{4,5}

The Claimant is seeking \$46,880.29 based on her loss calculated for 2010 and 2011 in addition to the average monthly income loss from 2010 and 2011 forecasted for 24 months of future damages.⁶

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 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).

¹ Letter from Arthur S. Barksdale IV, Esq. to NPFC dated 29 February 2012..

² Letter from Claimant to NPFC.

³ Letter from Claimant to NPFC.

⁴ Letter from Claimant to NPFC.

⁵ Document titled “Answers to Coast Guard Deficiency Letter – Angela Jones-Pyles.”

⁶ Document titled “Deep Water Horizon oil Spill 4/20/2010 Lost Earnings/Income Worksheet.”

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

- Claim cover letter from Arthur S. Barksdale IV, Esq. dated 29 February 2012;
- Email from Claimant's attorney office to the NPFC dated 29 February 2012;
- Document titled "NPFC Authorization Agreement" signed by Claimant 09 February 2012;
- GCCF denial letter dated 10 December 2011;
- GCCF Full Review Final Payment Claim Form signed by Claimant 13 September 2011;
- Document titled "Deep Water horizon Oil Spill 4/20/2010 Lost Earnings/Income Worksheet" dated 15 October 2011;
- Copy of Claimant's driver license;
- Letter from Claimant;
- Letter from Bruce Camacho to Claimant dated 07 December 2010;
- Letter from Bruce Camacho;
- 2008 Form 1040 U.S. Individual Income Tax Return;
- 2009 Form 1040 U.S. Individual Income Tax Return;
- 2010 Form 1040 U.S. Individual Income Tax Return;
- GCCF Client Authorization Form dated 13 September 2011;
- Email from Claimant's attorney office to the NPFC dated 20 April 2012;
- Document titled "Answers to Coast Guard Deficiency Letter – Angela Jones-Pyles";

- Document titled "Requested Documents for Coast Guard Deficiency Letter – Angela Jones-Pyles."

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$46,880.29.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 19 November 2010 in the amount of \$12,000.00.⁷ She was assigned Claimant ID #3411121 and claim #486898. This claim was denied.⁸ She also filed an Interim Claim (IC) on 08 March 2011 in the amount of \$23,000.00.⁹ She was assigned claim #9316871 and it was denied.¹⁰ Additionally, the Claimant filed a Full Review Final (FRF) claim on 26 October 2011 with the GCCF for \$46,880.29.¹¹ She was assigned claim #9526895. This claim was denied on 10 December 2011.¹²

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that a reduction in income occurred as result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary/Determination for NPFC Claim #N10036-1698 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 486898 (EAP), 9316871 (IC), and 9526895 (FRF).

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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. The letter requested, among other things, financial documentation from her alleged employer Bruce Camacho Bail Bonds for an accurate accounting of the Claimant's losses. The NPFC request was sent on 03 April 2012.¹³ On 20 April 2012, the Claimant replied to the letter. She stated she is unable to provide any W-2, 1099, paystubs, or financial documents from her alleged employment.¹⁴ Without documentation to prove that she worked for Bruce Camacho Bail Bonds or to calculate her alleged sum certain the Claimant has failed to meet the requirements of 33 C.F.R. § 136.231-235 to establish a claim for loss of profits or impairment of earnings capacity.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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.

⁷ Report from GCCF dated 17 April 2012.

⁸ Report from GCCF dated 17 April 2012.

⁹ Report from GCCF dated 17 April 2012.

¹⁰ Report from GCCF dated 17 April 2012.

¹¹ Report from GCCF dated 17 April 2012.

¹² GCCF Denial Letter dated 10 December 2012.

¹³ USPS tracking # 7011 1570 0001 2446 3459.

¹⁴ Letter from the Claimant to the NPFC answering the NPFC's questions.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/30/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: