

U.S. Department of
Homeland Security

United States
Coast Guard



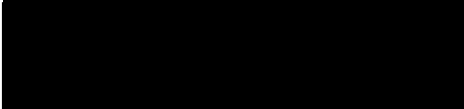
Director
United States Coast Guard
National Pollution Funds Center

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 3541

5890/DWHZ
15 May 2012

Vance, Lotane & Barksdale, PA



RE: Claim Number: N10036-1730

Dear Mr. Barksdale:

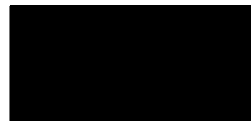
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-1730 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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. 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 N10036-1730.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
U.S. Coast Guard

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3527

Stephanie Taylor
76 Carson Dr. NE
Fort Walton Beach, FL 32548

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1730
Claimant	Stephanie Taylor
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$48,996.32

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 26 March 2012, Stephanie Taylor (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$48,996.32 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant worked as a nurse for Home Sweet Home, which is an in home healthcare provider in Fort Walton Florida.¹ The Claimant alleges that the family that she provided in home healthcare for, lost their business do to the oil spill and as a result she lost them as a client.² Home Sweet Home retained her as an employee through December 2010 and then she was allegedly laid off due to lack of business.³

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.

¹ Claimant's hardship letter undated.

² Claimant's hardship letter undated.

³ Claimant's hardship letter undated.

- (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 undertake, 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 her claim, the Claimant submitted the following:

- Attorney cover letter dated 26 March 2012;
- Attorney authorization letter signed by Claimant dated 07 March 2012;
- GCCF denial letter on Interim Payment/Final Payment Claim dated 27 January 2012;
- Lost earnings/income worksheet dated 27 December 2011;
- Copy of Florida drivers license;
- Claimant's hardship letter undated;
- Letter from Lynn Ross (owner) of Home Sweet Home dated 22 October 2011;
- 2008 Form 1040 U.S. Individual Income Tax Return;
- 2008 Form W-2 from Worklife Financial of Florida;
- 2009 Form 1040 U.S. Individual Income Tax Return;
- 2010 Form 1040 U.S. Individual Income Tax Return;
- Letter from Mybpsettlement undated;

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$48,996.32.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Six Month claim (EAP) with the GCCF on 17 November 2010 in the amount of \$5,000.00.⁴ She was assigned Claimant ID #3410632 and claim #486239.⁵ This claim was denied.⁶ Additionally, the Claimant filed two Full Review Final claims with the GCCF, Full Review Final Claim 1 (FRF1) with GCCF #9114020 and Full Review Final Claim 2 (FRF2) with Claim #9553457; one was filed on 31 December 2010 for \$5,000.00 and the other was filed on 05 January 2012 for \$48,996.32.⁷ These claims were denied.⁸

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 she lost earnings as a 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 N10036-1730 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 486239 (EAP), 9114020 (FRF1), and 9553457 (FRF2).

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 connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim.⁹ The letter requested, among other things, financial documentation for an accurate accounting of the Claimant's losses and a letter from her employer showing the impact of the oil spill upon her business.¹⁰ It was sent on 04 April 2012. On 09 April 2012, the Claimant acknowledged receipt of the letter.¹¹ To date no response has been received by the NPFC.

The NPFC accordingly proceeded to evaluate the claim with the evidence the Claimant had originally submitted. The Claimant submitted a letter from her employer, Lynn Ross, dated 22 October 2011 stating that the cause of her layoff was "lack of business."¹² On 04 April 2012, the NPFC contacted the employer and asked her for the cause of the termination, she stated that when the client left town, Home Sweet Home could not supply her with a new client.¹³ In neither the letter from the employer nor the telephone call, was the Deepwater Horizon oil spill mentioned as the cause of any alleged losses.

⁴ Report from the GCCF dated 08 May 2012.

⁵ Report from the GCCF dated 08 May 2012.

⁶ Report from the GCCF dated 08 May 2012.

⁷ Report from the GCCF dated 08 May 2012.

⁸ Report from the GCCF dated 08 May 2012.

⁹ NPFC's request for additional information dated 04 April 2012.

¹⁰ NPFC's request for additional information dated 04 April 2012 at documentation request 1 through 4.

¹¹ USPS tracking #7011 1570 0001 2446 3145.

¹² Employer letter dated 22 October 2011.

¹³ Call log 04 April 2012 with Lynn Ross, Owner of Home Sweet Home.

The Claimant provided no documentation to prove the causation of her alleged loss. As such, the Claimant has not established by a preponderance of the evidence that her alleged loss of earnings was due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate 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.

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***5/15/12***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments: