

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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: ari-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4258

5890/DWHZ
23 April 2012

Norma Southard


Re: Claim Number: N10036-1731

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 N10036-1731 involving the Deepwater Horizon oil spill. 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 N10036-1731.

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: Claim Summary/Determination Form
CC: Norma Southard
2111 W. Lake View Avenue, Pensacola, FL 32505
Certified Mail #: 7011 1570 0001 2446 4265

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1731
Claimant	Norma Southard
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$23,292.03

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 27 March 2012, Arthur S. Barksdale IV, Esq., on behalf of Norma Southard, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$23,292.03 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the spill, the Claimant worked as a server at Norma's On the Run.² Claimant's employer alleges that the restaurant suffered losses from May 2010 through March of 2011 which resulted in pay and hour decreases.³ The Claimant further states that the oil spill impacted her family's recreational and eating habits.⁴

In order to calculate her losses, the Claimant averaged her 2008 and 2009 income and subtracted 2010 and 2011 (projected) separately. The results were added and then multiplied by 36 as an "industry effect multiplier" reaching the \$23,292.03 sought by the Claimant.⁵

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:

¹ Claim Cover Letter, 26 March 2012.

² Letter from Employer, 15 September 2011.

³ Letter from Employer, 15 September 2011.

⁴ Letter from Claimant, 12 September 2011.

⁵ Lost Earning/Income Worksheet.

- (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 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 this claim, the Claimant submitted the following documentation:

- Law Firm Cover Letter Describing Claim and Compensation Sought, dated 26 March 2012;
- NPFC Authorization Agreement for representation by firm, 3 February 2012;
- GCCF Deficiency Letter on Interim/Final Payment Claim, 9 February 2012;
- Submitted GCCF Full Final Review Claim Form, signed 7 September 2011;
- Photocopy of drivers license;
- Photocopy of social security card;
- Lost Earning/Income Worksheet;
- Second copy of drivers license;
- Claimant Letter Explaining Impact of Oil Spill, signed 12 September 2011;
- Letter from Claimant's Employer confirming employment and business/hours decline, signed 15 September 2011;
- Copy of Claimant's Pay Records from 2008;
- Copy of Claimant's Pay Records from 2009;
- Copy of Claimant's Pay Records from 2010;
- Copy of Signature Page from Submitted GCCF Claim, signed 7 September 2011;

- 2011 W-2 Wage and Tax Statement, showing earnings of \$17,289.76;
- 2011 1040 Individual Income Tax Return;
- 2009 1040 Individual Income Tax Return;
- 2010 1040 Individual Income Tax Return;
- 2009 W-2 Wage and Tax Statement, showing earnings of \$17,606.50;
- 2008 1040 Individual Income Tax Return (page 2).

On 10 October 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$23,292.03.⁶ The Claimant was assigned Claimant ID 1635933 and the FRF claim was assigned claim # 9523379.⁷ The RP/GCCF denied payment on this claim.

On 10 January 2012, the Claimant presented a FRF claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$23,292.03.⁸ The Claimant retained assigned ID 1635933 and the FRF claim was assigned claim # 9554930.⁹ The RP/GCCF denied payment on this claim.

On 27 March 2012, the Claimant submitted this claim to the NPFC, seeking \$23,292.03 in loss of profits and impairments of earning capacity damages.¹⁰ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹¹ Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$23,292.03.

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, 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 this claim.

In order to prove a claim for loss of profits 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.

1. Failure to demonstrate an actual financial loss.

The Claimant alleged that she sustained an earnings and tips loss of \$358.69 for 2010 as well as a projected loss of \$7,112.34 for 2011 due to a decrease in business at the Claimant's place of employment.¹²

However, the Claimant's 1040 Tax Returns and W-2 Wage and Tax Statements fail to demonstrate a loss, and actually show that the Claimant's income increased in 2010 as compared

⁶ GCCF United States Coast Guard Report, 12 April 2012.

⁷ GCCF United States Coast Guard Report, 12 April 2012.

⁸ GCCF United States Coast Guard Report, 12 April 2012.

⁹ GCCF United States Coast Guard Report, 12 April 2012.

¹⁰ Claim Cover Letter, 26 March 2012.

¹¹ 33 C.F.R. § 136.103(a).

¹² Lost Earnings/Income Worksheet.

to 2009.¹³ Furthermore, the Claimant's estimated income of \$6,843 for 2011 is negated by the included 2011 W-2, which shows the Claimant's actual earnings to be \$17,606.05.¹⁴ These earnings are consistent with the general fluctuations in the Claimant's earnings between 2008 and 2011 and fail to support the Claimant's assertion that she suffered an actual financial loss.

2. Failure to prove loss due to Deepwater Horizon oil Spill.

The Claimant alleged that business at Norma's On the Run decreased between May 2010 and March 2011.¹⁵

Although the Claimant includes a letter from her employer stating the business suffered losses, this contradicts the included salary breakdowns. In addition, the Claimant's increased earnings in 2010 fail to reconcile her employer's statement that she endured lost hours and pay.¹⁶ According to the Claimant's provided salary statement, her weekly earnings remained generally consistent in the latter half of 2010 after the oil spill took place.¹⁷

Based on the foregoing, the Claimant has failed to demonstrate that the oil spill in any way affected business at Norma's On the Run, or impacted her individual earnings.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$23,292.03, and (2) 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:  *NPI Claims Adjudication Division*

Date of Supervisor's Review: *4/23/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹³ Lost Earnings/Income Worksheet.

¹⁴ 2011 W-2 Wage and Tax Statement.

¹⁵ Letter from Employer, 15 September 2011.

¹⁶ Lost Earnings/Income Worksheet.

¹⁷ Copy of Claimant's Pay Records for 2010.