

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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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3787

5890/DWHZ
06 June 2012

Kimberly L. Bryant


Re: Claim Number: N10036-1766

Dear Ms. Bryant:

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 N10036-1766 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 N10036-1766.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1766
Claimant	Kimberly Bryant
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$47,000.00

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 16 April 2012, Kimberly Bryant (the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$47,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is employed as a bartender at the Holiday Isle Resort & Marina, located in Key Largo, Florida.¹ The Claimant asserted that, due to the Deepwater Horizon oil spill, fewer guests came to Holiday Isles because they were afraid to go the beaches.² This decrease in guests led to a reduction in work hours for the Claimant that will allegedly continue through December of 2013.³

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 the Claimant to the GCCF, dated 11 November 2011.

² Letter from the Claimant to the GCCF, dated 11 November 2011.

³ Letter from the Claimant to the GCCF, dated 11 November 2011.

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

- Optional OSLTF Claim Form, dated 01 April 2012;
- Authorization to obtain GCCF documentation, undated;
- Deficiency Denial Letter on Interim Payment/Final Payment Claim, 01 March 2012;
- GCCF Full Review Final Payment Claim Form, dated 9 November 2011;
- GCCF Full Review Final Payment Claim Form, dated 5 March 2012;
- Deficiency Letter on Interim Payment/Final Payment Claim, 7 December, 2011;
- Deficiency Denial Letter on Interim Payment/Final Payment Claim, 14 February 2011;
- Denial Letter on Interim Payment/Final Payment Claim, 24 March 2012;
- Copy of State of Florida Driver's License and Social Security Card;
- Letter of claim explanation from the Claimant, dated 04 February 2012;
- Letter from the Claimant to the GCCF, dated 11 November 2011;

- Letter from the Claimant's employer (Holiday Isle), dated 20 June 2010;
- Letter from the Claimant's employer (Holiday Isle), dated 11 November 2011;
- 2008 Form 1040A U.S. Individual Income Tax Return, including 2008 Form W-2 from Alphastaff Group, Inc.;
- 2009 Form 1040A U.S. Individual Income Tax Return, including 2009 Form W-2 from Alphastaff Group, Inc.;
- 2010 Form 1040A U.S. Individual Income Tax Return, including 2010 Form W-2 from Alphastaff Group, Inc.;
- Various map images of oil spill;
- Various newspaper articles regarding the Deepwater Horizon oil spill;
- GCCF Client Authorization Form, signed by the Claimant on 02 September 2011; and
- Biweekly Alphastaff pay statements from 22 December 2010 through 2 January 2012.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final Payment (FRF1) claim with the GCCF for loss of earnings in the amount of \$29,300.00 on 9 November 2011.⁴ The Claimant was assigned Claimant ID # 3565209 and Claim # 9531775. The Claimant also filed an additional Full Review Final Claim (FRF2) claim with the GCCF for loss of earnings in the amount of \$29,300.00 on 5 March 2012; she was assigned Claim # 9574261.⁵ Both of these claims were denied by the GCCF.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of her claims before the NPFC, i.e., that due to the Deepwater Horizon oil spill the Claimant experienced a reduction in work hours as a bartender at Holiday Isle. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC up to \$29,300.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1766 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 9531775 (FRF1) and 9574261 (FRF2).

NPFC Determination

This claim is denied because (1) the Claimant failed to present some of the damages claimed to the responsible party (GCCF), (2) some of the Claimant's alleged damages are for future losses and are not compensable under OPA, and (3) some of the evidence presented by the Claimant represents a material misrepresentation of fact.

1. Failure To Present Damages

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented two separate full review final claims to the GCCF for loss of earnings in the amount of \$29,300.00. The Claimant then presented a claim for \$47,000.00 in loss of profits and impairment of earning capacity to the NPFC. Any claimed amount of damages exceeding \$29,300.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

⁴ Report from the Transition Program, dated 01 May 2012.

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

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

2. Non-Compensable Damages

The Claimant indicated that the claimed damages to the NPFC included damages for the period through December of 2013.⁷ However, under 33 CFR § 136.235, “the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*.”⁸ Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future. Consequently, to the extent the losses claimed by the Claimant are for future losses, those damages are non-compensable under OPA and therefore denied.

3. Material Misrepresentation of Fact

The Claimant asserted that she was a bartender at Holiday Isle Resort and Marina and that she experienced a reduction in work hours as a result of the Deepwater Horizon Oil Spill.⁹ In her submission to the NPFC, the Claimant provided two signed letters from Holiday Isle that confirmed a reduction in her work hours.¹⁰ On 22 May 2012, the NPFC contacted Holiday Isle Marina and Resort to confirm the Claimant’s assertions and the validity of the letters provided. The NPFC was informed by Holiday Isle that neither of the letters were written by Holiday Isles.¹¹ Furthermore, the NPFC was informed that the Claimant is not even an employee of Holiday Isles.¹²

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

The Claimant’s request for \$47,000.00 is hereby denied because (1) the Claimant failed to present all damages to the responsible party, (2) some of the damages claimed are for future damages and not OPA compensable, (3) the evidence presented by the Claimant regarding the detailed information provided by the employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order to obtain funds from the Federal Government under false pretenses and the Claimant failed to demonstrate she experienced a loss in the amount alleged and as such, this claim is denied.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *6/6/12*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

⁷ Letter from the Claimant to the GCCF, dated 11 November 2011.

⁸ Emphasis added.

⁹ Letter from the Claimant to the GCCF, dated 11 November 2011.

¹⁰ Letter from the Claimant to the GCCF, dated 11 November 2011; Letter from the Claimant’s employer (Holiday Isle), dated 20 June 2010

¹¹ Email from Holiday Isle to the NPFC on 22 May 2012.

¹² Email from Holiday Isle to the NPFC on 22 May 2012.