

U.S. Department of
Homeland Security

**United States
Coast Guard**

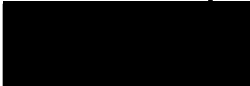


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 1172

5890/DWHZ
13 June 2012

Adrienne Pettway


RE: Claim Number: N10036-1792

Dear Ms. Pettway:

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 N10036-1792 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

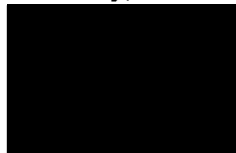
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1792.

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

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1792
Claimant	Adrienne Pettway
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,000.00

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 04 May 2012, Adrienne Pettway (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$8,000.00 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 an oil spill response worker for Personal Staffing Inc. in 2010.¹ The Claimant alleges that she had a two year contract with BP and was promised employment for five to ten years.² The Claimant asserts that she has been damaged in the amount of \$8,000.00 as a result of being laid off and purchasing equipment for the job.³ The Claimant further alleges that her "right to eat fish" was impacted.⁴

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 § 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 Optional OSLTF claim form dated 23 April 2012.

² Claimant's response to NPFC's request for additional information dated 12 May 2012 at question 3 and 10.

³ Claimant's response to NPFC's request for additional information dated 12 May 2012 at question 6.

⁴ Optional OSLTF claim form dated 23 April 2012 at question 2 and 9.

- (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:

- Optional OSLTF claim form dated 23 April 2012
- 2007 Form 1040A U.S. Individual Income Tax Return
- 2008 Form 1040A U.S. Individual Income Tax Return
- 2010 W-2 from Personnel Staffing, Inc. for \$3,375.00
- Paystubs from Personnel Staffing Inc.
- Labor Finders Work order dated 16 July 2010
- 2009 W-2 from Hibbett Sporting Goods for \$7,395.17
- Certificate of Training for OSHA HAZWOPER dated 15 June 2010
- Fishing license for seven day saltwater trip dated 20 April 2010
- Residential saltwater fishing license valid for 11 July 2008 through 31 September 2008
- BP contractor badge
- Copy of TWIC card expires 17 July 2015
- Claimant's response to NPFC's request for additional information dated 12 May 2012
- 2009 Form 1040A U.S. Individual Income Tax Return

- 2011 1099-G from the State of Alabama Dept of Industrial Relations Unemployment Compensation Agency for \$2,310.00
- Industrial Relations Weekly Claims Status dated 16 May 2012
- Paystubs from Hibbett Sports

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$8,000.00.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF; she was assigned Claimant ID #1171121 and claim #198757.⁵ This claim was denied.⁶ Additionally, the Claimant filed an Interim 1 claim (ICQ12011) with GCCF #9139263 and was denied.⁷ The Claimant filed five Full Review Final Claims with GCCF #'s 9132913 (FRF1), 9574114 (FRF2), 9574680 (FRF3), 9587484 (FRF4), and 9588003 (FRF5).⁸ FRF1 is under review, FRF2 is under re-review, FRF3 is under review, FRF4 was denied, and FRF5 was denied.⁹

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 four 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 N10036-1792 considers and addresses the earnings claimed in all of the four denied claims presented to the responsible party, specifically; GCCF Claim #'s 198757 (EAP), 9132913 (ICQ12011), 9587484 (FRF4) and 9588003 (FRF5).

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.

The Claimant worked as an oil spill response worker for Personal Staffing Inc. after the Deepwater Horizon oil spill.¹⁰ The Claimant finished HAZWOPER training 15 June 2010¹¹ and her paychecks submitted to the NPFC from Personal Staffing are dated 20 June 2010 through 16 July 2010.¹² The Claimant alleges she lost expenses for equipment and wages due to the contract not being honored for two years.¹³

⁵ GCCF status report.

⁶ GCCF status report.

⁷ GCCF status report.

⁸ GCCF status report.

⁹ GCCF status report.

¹⁰ Optional OSLTF claim form dated 23 April 2012.

¹¹ Hazmat training certificate dated 15 June 2010.

¹² Paystubs from Personal Staffing.

¹³ Claimant's response to the NPFC's request for additional information dated 12 May 2012 at question 10.

The Claimant became employed as a Hazmat oil spill response worker in response to the oil spill. The Claimant did not lose wages as a result of the oil spill but rather became employed with Personal Staffing Inc. as a result of the oil spill. The Claimant's loss of her position with the oil spill response organization is not a loss caused by the effects of the Deepwater Horizon oil spill, and is not compensable under OPA.

The Claimant asserts that as an oil spill response worker, she saw a lot of dead fish and has lost her right to eat fish.¹⁴ The Claimant's loss of desire to eat fish or her self-imposed dietary restriction is not an OPA compensable damage.

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.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/13/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁴ Optional OSLTF claim form dated 23 April 2012 at question 2 and 9, and Claimant's response to NPFC's request for additional information dated 12 May 2012 at question 9.