

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: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2575

5890/DWHZ
15 May 2012

Kimberly Wood


Re: Claim Number: N10036-1801

Dear Ms. Wood:

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 N10036-1801 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

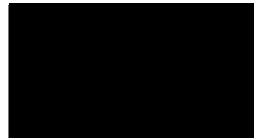
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1801.

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

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NPFC CLAIMS

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1801
Claimant	Kimberly Wood
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$18,072.00

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 8 May 2012, Kimberly Wood (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$18,072.00 in loss of profits and impairment of earnings capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working at Wine World as a sales associate.² The Claimant alleged to have lost her job because of a decrease in sales due to the Deepwater Horizon oil spill.³

In order to calculate her losses, the Claimant estimated losses from August 2010 to May 2012, and subtracted unemployment compensation and a GCCF emergency payment to reach a "final claimed amount" of \$18,072.00.⁴

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 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.
- (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.

¹ Email from the Claimant to the NPFC with Claim Information, dated 8 May 2012.

² Letter of Support from Employer, undated.

³ Email from the Claimant to the NPFC with Claim Information, dated 8 May 2012.

⁴ Email from the Claimant to the NPFC with Claim Information, dated 8 May 2012.

- (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:

- Email from the Claimant to NPFC with Claim Information, dated 8 May 2012;
- Reply Email from NPFC Confirming Receipt, dated 8 May 2012;
- Email from the Claimant with Unemployment Verification, dated 7 May 2012;
- Letter of Support from Employer, undated (two copies);
- Email from the Claimant with Attached Support Letter, dated 7 May 2012;
- Email from the Claimant Explaining GCCF Efforts with Attached Files, dated 7 May 2012;
- 2010 W-2 Wage and Tax Statement;
- Unemployment Summary for 2010;
- Emergency Unemployment Compensation Monetary Determination, mailed 2 November 2010;
- Emergency Unemployment Compensation Monetary Determination, mailed 21 December 2012;
- Wage Transcript and Determination for 2010 Unemployment;
- 2010 Income Tax Return Transcript;
- 2009 Income Tax Return Summary;
- Email from the Claimant with Attached 2009 Income Tax Return, dated 7 May 2012;
- Email from the Claimant with Claim Form and Documentation, dated 8 May 2012.

Prior to presenting this claim to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages.⁵ The Claimant was assigned Claimant ID 3421828 and the EAP claim was assigned claim # 500298.⁶ The RP/GCCF issued a payment of \$8,000 for this claim.⁷

Prior to presentment to the NPFC, the Claimant also presented an Interim Payment for Q2 in 2011 (IPQ22012) to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages.⁸ The Claimant retained Claimant ID 3421828 and the IPQ22012 was assigned claim # 9362842.⁹ The RP/GCCF extended a final payment offer of \$5,000 that has since expired.

Prior to presentment to the NPFC, the Claimant presented an Interim Payment for Q3 in 2011 (IPQ32012) to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages.¹⁰ The Claimant retained Claimant ID 3421828 and the IPQ32012 was assigned claim # 9436208.¹¹ The RP/GCCF referenced the previously expired final payment offer, and though it is not clear, it appears this claim was denied.

Prior to presentment to the NPFC, the Claimant presented an Interim Payment for Q4 in 2011 (IPQ42012) to the RP/GCCF, seeking loss of profits and wages damages.¹² The Claimant retained Claimant ID 3421828 and the IPQ42012 was assigned claim # 9541442.¹³ The claim is still under review with the RP/GCCF.

On 8 May 2012, the Claimant presented this claim to the NPFC, seeking \$18,072.00 in loss of profits and impairments of earning capacity damages.¹⁴ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹⁵ Any damages now before the NPFC, which were not first presented to the RP/GCCF are denied for improper presentment.

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. This claim is denied because the Claimant has not provided documentation sufficient to prove either.

For example, regarding the Claimant's proof of loss, while the Claimant has provided W-2's for 2010, that documentation by itself is insufficient to establish an economic loss without some type

⁵ GCCF Claimant Status, accessed 14 May 2012.

⁶ GCCF Claimant Status, accessed 14 May 2012.

⁷ GCCF Claimant Status, accessed 14 May 2012.

⁸ GCCF Claimant Status, accessed 14 May 2012.

⁹ GCCF Claimant Status, accessed 14 May 2012.

¹⁰ GCCF Claimant Status, accessed 14 May 2012.

¹¹ GCCF Claimant Status, accessed 14 May 2012.

¹² GCCF Claimant Status, accessed 14 May 2012.

¹³ GCCF Claimant Status, accessed 14 May 2012.

¹⁴ Email from the Claimant to the NPFC with Claim Information, dated 8 May 2012.

¹⁵ 33 C.F.R. § 136.103(a).

of corroborating documentation such as signed tax returns for the same years. With respect to causation, the only evidence linking the Claimant's alleged loss to the Deepwater Horizon oil spill is an email written by the Claimant and a letter from her employer (undated) that simply stated the Claimant was terminated due to low sales numbers. No reference to the oil spill was ever made by the employer.

The NPFC contacted the Claimant's employer and was informed that the employer had expressly stated to the Claimant that the letter would not attribute the termination to the oil spill.¹⁶ The NPFC also learned that the termination was largely related to work performance,¹⁷ as stated in the letter itself.¹⁸

Furthermore, under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*."¹⁹ 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 are therefore denied.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that she sustained a loss in the amount of \$18,072.00, 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: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁶ PHONECON: NPFC and Claimant's Employer, 14 May 2012.

¹⁷ PHONECON: NPFC and Claimant's Employer, 14 May 2012.

¹⁸ Letter of Support from Employer, undated. (The Claimant "was terminated due to low sales numbers.")

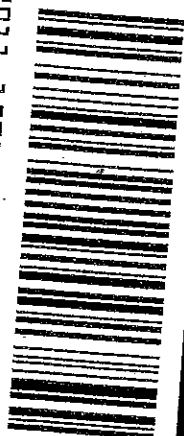
¹⁹ Emphasis added.

Visual Screening
May 8 1 26.8
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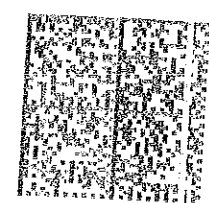
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3567 E. COUNTY HWY 30A
SANTA ROSA BEACH, FL 32459



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For Private Use
\$05.950
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102595-02-M-1540

Domestic Return Receipt

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3. Service Type
☐ Registered ☐ Express Mail
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☐ C.O.D.

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

C. Date of Delivery

B. Received by (Printed Name)

A. Signature ☒ Agent ☐ Addressee

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, on the front if space permits.

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