

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8664

5890/DWHZ
4 September 2012

Ms. Tina Marie Melvin


Re: Claim Number: N10036-1859

Dear Ms. Melvin:

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 N10036-1859 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 N10036-1859.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1859
Claimant	Ms. Tina Marie Melvin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$4,375.00

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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 09 July 2012, Ms. Tina Marie Melvin (the Claimant) submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$4,356.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹ On 09 August 2012, Claimant submitted an updated OSLTF claim form seeking \$4,375.00.²

At the time of the Deepwater Horizon oil spill, the Claimant worked as a server at Bar Louie, a bar and restaurant in Fort Myers, Florida. The Claimant alleged that the Deepwater Horizon oil spill caused a drop in her wages and tips, as patronage decreased and the restaurant cut her hours in the period following the oil spill.³ The Claimant was employed at the restaurant from March 2007 until November 2011.⁴

As a result, the Claimant filed this claim seeking \$4,375.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.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

¹ Hardship Letter, dated 28 June 2012.

² AI Received 09 August 2012, including supplementary OSLTF claim form.

³ Loss Calculation spreadsheet, appended to Hardship Letter dated 28 June 2012.

⁴ Email from Claimant to Restaurants of America, 15 November 2011.

⁵ Hardship Letter, dated 28 June 2012.

water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF 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. 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;
- (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; and
- (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 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

To support her claim, the Claimant submitted the following documentation:

- Hardship Letter, dated 28 June 2012;
- Loss Calculation spreadsheet, appended to Hardship Letter;

- Optional OSLTF Claim Form, signed on 23 July 12;
- Emails between the Claimant and former employer, 15 November 2011;
- Letter from the GCCF to the Claimant, 31 July 2011, Claimant ID 3467923;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 April 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 28 April 2012;
- GCCF Follow-Up to Previous Denial Letter, 12 October 2011;
- 2009 Form 1040A, showing wages of \$25,795.00;
- 2009 Form W-2 Wage and Tax Statement, showing wages of \$25,795.28;
- 2009 Schedule B (Form 1040A or 1040);
- 2009 Form 8863;
- 2009 Schedule M (Form 1040A or 1040);
- 2009 Form 8815;
- 2009 Form 10990-INT;
- 2011 Form 1040A, showing wages of \$19,654.00;
- 2011 Form W-2 Wage and Tax Statement, showing earnings of \$19,654.00;
- 2010 Form 1040A, showing wages of \$26,249.00;
- 2010 Form W-2 Wage and Tax Statement, showing earnings of \$10,552.50;
- 2010 Form W-2 Wage and Tax Statement, showing earnings of \$13,128.02;
- 2010 Form W-2 Wage and Tax Statement, showing earnings of \$2,568.50;
- 2010 Form 8863;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Form 1098-T;
- 2010 Form 1099-Q;
- Bar Louie, Fort Meyers, Inc., Compensation Detail Report;
- Pay Stub, Pay period 10/18/2010 – 10/31/2010;
- Letter from the Claimant to the NPFC, describing claim and previous dealings with the GCCF, received 9 Aug 2012;
- Letter from the Claimant's employer regarding losses, 23 July 2012;
- Maps showing oil spill effects.

On 09 July 2012, the Claimant presented this claim to the NPFC, seeking \$4,356.00 or, alternatively, \$4,375.42 in loss of profits and impairment of earning capacity damages.⁶ This amount was amended and clarified through the submission of additional information and a supplementary OSLTF claim form on 09 August 2012 seeking \$4,375.00.⁷ The Claimant stated that prior to presenting this claim to the NPFC; she presented a claim to the RP/GCCF and was assigned GCCF Claimant ID # 03467923.⁸ Accordingly, this Claim Summary and Determination presumes that the Claimant's prior claim satisfies OPA presentation requirements and addresses only those damages sought in the Claimant's prior submission to the RP/GCCF. Any damages not first presented to the RP/GCCF are denied for improper presentment.⁹

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

⁶ Hardship Letter, dated 28 June 2012.

⁷ AI Received 09 August 2012, including supplementary OSLTF claim form.

⁸ Hardship Letter, dated 28 June 2012.

⁹ 33 C.F.R. § 136.103(a).

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As an initial matter, it appears that the Claimant is a member of the E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate the NPFC to those rights.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that she is a member of the economic damages class of the E&PD Settlement, she should submit evidence to indicate that she has either opted out or is excluded from the E&PD Settlement in a request for reconsideration of this claim.

Furthermore, this claim for loss of profits and impairment of earning capacity damages is also denied on its merits, as the Claimant has failed to establish either a financial loss or that her alleged loss is the result of the Deepwater Horizon oil spill. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

The Claimant filed this claim seeking \$4,375.00 in loss of profits and impairment of earning capacity damages.¹⁰ The Claimant's submissions indicate that she calculated her damages by subtracting her average pay after the Deepwater Horizon oil spill from her average pay before the Deepwater Horizon oil spill, reaching a \$312.53 average decrease per pay period. She then applied this difference to the next 14 pay periods, reaching a total of \$4,375.42 in alleged financial loss.¹¹

However, financial documentation provided by the Claimant fails to indicate that the Claimant's income actually decreased in the period following the Deepwater Horizon oil spill. A report of the Claimant's compensation details show that the Claimant's hours and net pay actually increased in the second quarter of 2010, as compared to the first. Specifically, the Claimant netted \$878.54 from January through April of 2010, as compared to \$1,159.06 from April through July of 2010.¹² The Claimant's net pay continued to increase in the third and fourth quarters of 2010, when the Claimant's reported net earnings totaled \$1,229.40 and \$1,738.77. Increases in the Claimant's hourly earnings are further substantiated by the Claimant's tax returns, which indicate that the Claimant reported wages of \$25,795.00 in 2009, as compared to \$26,249.00 in 2010.¹³ The Claimant has therefore failed to prove that she sustained an actual financial loss in the period following the oil spill.

¹⁰ Hardship Letter, dated 28 June 2012, appended to Hardship Letter dated 28 June 2012.

¹¹ Hardship Letter, dated 28 June 2012.

¹² Bar Louie, Compensation Detail.

¹³ 2009, 2010 Forms 1040A.

The Claimant has also failed to prove that the Deepwater Horizon oil spill caused her alleged financial loss. The Claimant alleged that her employer cut her hours and that business decreased as a result of the Deepwater Horizon oil spill, prompting the Claimant to resign in November of 2011.¹⁴ In support of these assertions, the Claimant provided a letter from her former manager, stating that the Claimant's "reason for leaving was due to the hours of operation and the loss of income" following the oil spill.¹⁵ The NPFC contacted the restaurant to verify the contents of this letter. A representative of the company stated that the Claimant voluntarily left her employment with the company and that prior to her leaving, the Claimant's hours and earnings were not reduced.¹⁶

Claimants submitting false claims or making false statements in connection with those claims risk prosecution under Federal law, including but not limited to 18 U.S.C. §§ 287 and 1001.¹⁷ Additionally, those submitting written documentation supporting their claim that they know or should know is false may be subject to a civil penalty for each claim.

Accordingly, the Claimant's claim of \$4,375.00 is denied in its entirety because the Claimant has failed to demonstrate (1) that she sustained a financial loss in the amount claimed, 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 discharge of oil. Additionally, this claim is denied because (3) the Claimant appears to have misrepresented material facts relating to her claim and (4) because this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/4/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁴ Loss Calculation spreadsheet, appended to Hardship Letter dated 28 June 2012.

¹⁵ Letter from Randi Tiedmen, 23 July 2012.

¹⁶ PHONECON: NPFC Staff and management, Bar Louie Management, 27 August 2012.

¹⁷ 33 C.F.R. § 136.9.