

U.S. Department of
Homeland Security

United States
Coast Guard



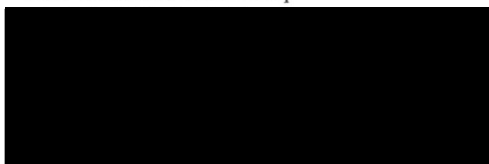
Director
National Pollution Funds Center
United States Coast Guard

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 2000 0001 1246 6885

5890/DWHZ
1 August 2013

Mr. Todd Aufdencamp



Re: Claim Number: N10036-1971

Dear Mr. Toups:

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 N10036-1971 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 N10036-1971.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



Claims Rejudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination
cc:



By Certified Mail:
No. 7011 2000 0001 1246 6878

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1923
Claimant	Todd Aufdencamp
Type of Claimant	Government (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$250,000.00

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 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 16 April 2013, Mr. Mitchell Toups, legal representative of Mr. Todd Aufdencamp, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$250,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a deckhand for a company called Southern States Offshore. The Claimant alleged that he was unable to be promoted to a captain position due to the oil spill. As such, the Claimant seeks to recover alleged loss of profits damages totaling \$250,000.00. The Claimant does not provide an indication as to how this amount was calculated.²

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 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.

¹ Claim cover letter, 16 April 2013.

² BP Claim Form for Individuals and Businesses.

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

The Claimant submitted the following documentation in support of this claim:

- Claim Cover letter, 16 April 2013;
- BP Claims Program – Claim Form for Individuals and Businesses, partially completed;
- Statement of Loss, 16 April 2013;
- 2012 Form W-2 Wage and Tax Statement, showing earnings of \$27,347.00;
- 2012 Form 1040, showing earnings of \$27,347.00;
- 2011 Form W-2 Wage and Tax Statement, showing earnings of \$33,743.16;
- Tax Benefits Summary, 2011;
- 2010 Form 1040, showing earnings of \$30,380.00;
- 2010 Schedule M (Form 1040A or 1040);

- Record of unemployment compensation, 2009.2008 Form 1040, showing earnings of \$49,870.00;
- 2008 Form 8879;
- 2007 Form W-2 Wage and Tax Statement, showing earnings of \$50,862.84.

It appears as though the Claimant presented this claim to the BP Claims Program and the NPFC simultaneously.³ In order to present a claim to the NPFC, a claimant must first present the claim to the Responsible Party or its agent. If the claim is not settled by payment within 90 days of presentment, the claimant may present the same claim to the NPFC.⁴

On 23 April 2013, the NPFC contacted the Claimant by email, stating that the claim would be held in abeyance until presentment requirements were satisfied. On 16 July 2013, 90 days had lapsed since the Claimant's presentment to the RP. Thus, the claim became active with the NPFC on 17 July 2013. Because this is the same claim, for the same damages as were previously presented to the RP, OPA presentment requirements have been satisfied.

The NPFC notes that this claim is likely excluded by the Economic and Property Damage Class Action Settlement (E&PD Settlement).⁵

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(d) and 33 C.F.R. Part 136, a claimant must prove that any net loss of revenue 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.

In order to prove a claim for loss of profits damages a claimant must provide evidence sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was due to damage to real or personal property or natural resources resulting from the Deepwater Horizon oil spill.

This claim is denied because the Claimant did not experience an actual financial loss in the amount of \$250,000.00 and because the Claimant failed to prove that his alleged loss was due to the oil spill. The Claimant's loss is based on his not receiving an anticipated promotion from a deckhand position to a captain position. This loss is therefore speculative, and not compensable under OPA's loss of profits or impairment of earning capacity damage category, which only allows compensation "for net reduction or loss of earnings or profits suffered."⁶

Furthermore, the Claimant has not provided evidence to indicate that his failure to receive a promotion was caused by damage to real property or natural resources resulting from the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because (1) the Claimant has failed to prove 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 and (2) the Claimant has not demonstrated that he sustained a financial loss of \$250,000.00.

³ Claim cover letter addressed to the BP Claims Program, and cc'ed to the NPFC.

⁴ 33 C.F.R. § 136.103(c)(2).

⁵ The Claimant worked supporting the oil and gas industry in the Gulf of Mexico at the time of the oil spill.

⁶ 33 C.F.R. § 136.235.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/1/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: