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: 7010 0780 0001 8634 2142

5890/DWHZ
8 January 2014

Mr. Herman Williams
[redacted]

Re: Claim Number: N10036-2011

Dear Mr. Williams,

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 N10036-2011 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 N10036-2011.

Mail reconsideration requests to:

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

Sincerely,

[redacted]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2011
Claimant	Herman Williams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	$79,645.52

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 December 2013, Mr. Herman Williams ("the Claimant"), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $79,645.52 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.[1]

At the time of the incident, the Claimant states he had "a good job before the spill, but cannot get one now." As a result of apparent damages caused by the spill (documentation he claims is in his GCCF file and therefore has not submitted to the NPFC with his claim), he states that he was paid through the GCCF a rate of $3,278.49 per month, from October 2010 through June 2011, and then at a rate of $889.59 from July through December 2011. In January of 2012, he claims he had to accept the final $5,000.00 payment because he was under "economic duress" and needed the money.

He states that he was supposed to be paid the $3,278.49 through August 2013 as a result of continued unemployment and per documentation provided by the GCCF, but this did not happen. Thus he is claiming 34.5 months of payments at the appropriated $3,278.49/month (subtracting $33,462.38 in payments he claims he already received). $113,107.90 minus $33,462.38 totals $79,645.52 in claimed uncompensated damages.

[1] Claim Enclosure #1 written by Claimant, 24 January 2013.

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.

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:

- Affidavit of Economic Duress for Claimant, 20 January 2012;
- Claim Cover Letter written by Claimant, 28 November 2013;
- Claim Enclosure #1 written by Claimant, 24 January 2013.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP paid him interim payments between October 2010 and December 2011, and a final payment in January 2012.[2] On 16 December 2013, the Claimant presented this claim to the NPFC, seeking $79,645.52 in loss of profits or impairment of earning capacity

Evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).[3]

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 Class. 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 he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, even if the Claimant was not included in the Settlement Class, this claim is also denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

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[2] Claim Cover Letter, 28 November 2013.

[3] At the time of the spill, the Claimant was living within Economic Loss Settlement Zone C.

The Claimant alleged that he lost work and was unable to find employment as a result of the spill. He does not offer any documentation to support this assertion, nor does he mention what line of work and/or for whom he was working at the time of the spill. He requests the NPFC—which is a part of the United States Coast Guard and wholly separate from the GCCF and the Deepwater Claims programs—to access his documentation previously submitted to the GCCF and other claims programs instead of providing it himself. It is unclear, therefore, what the Claimant's employment entailed—if it was in fact affected by the spill—and whether or not he was even employed at the time of the incident.

The Claimant states that the GCCF lowered his monthly payments from $3,278.49/month in July 2011 to $889.59/month until the end of the year, with a $5,000.00 final payment in January 2012. In his affidavit, he claims that the GCCF reduced it on the grounds that he "was or was assumed to be "employed"" and that he "asserted [his] status as unemployed and supplied the GCCF with documentation, including a sworn affidavit stating that [he] had been and remained at all pertinent times "unemployed"". Independent research by the NPFC, using the Claimant's name and social security number provide by the Claimant, show that he may have been employed during the claimed damage period. Without the documentation he provided to the GCCF to prove he was entitled to compensation, it is unclear as to whether or not he is entitled to economic damages over and above what he has already been paid by the RP.

Additionally, based on information presented by the Claimant and made available to the NPFC by the RP,[4] the RP/GCCF has compensated the Claimant a total of $33,784.66, $28,784.66 in interim payments and a $5,000.00 final payment. The Claimant notes he has "settled with the GCCF." In doing so, the Claimant has executed a Release and Covenant Not To Sue in exchange for final payment. By signing this document, the Claimant released all future rights to recover against the RP or another party regarding this injury.

Any payment from the OSLTF requires the acquisition of all rights from the responsible party. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also receive compensation from the OSLTF. The subrogation of the Claimant's rights to BP is made clear in the release by the following language:

"... As this Release is fully and completely resolving, together with all other Claims, Claimant's claim under OPA, BP is hereby subrogated to any and all rights that Claimant has arising from the Incident."

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in the request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant, regarding compensation for injuries related to the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount of $79,645.52, (2) that the alleged loss is due to the injury, destruction, or loss of property or natural resources as a result of

[4] See Email from RP to NPFC regarding the Claimant, dated 23 December 2013.

a discharge or substantial threat of discharge of oil and (3) the Claimant has accepted final payment from the RP/GCCF and is ineligible to recover from the OSTLF. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***1/8/14***

Supervisor's Action: ***Denial approved***

Supervisor's Comments: