

U.S. Department of
Homeland Security

United States
Coast Guard

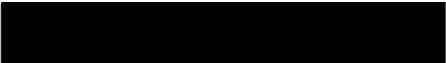


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arj-pf-npfccclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
Claim # N10036-1376
3 October 2011

Marcus C. Brown


Dear Mr. Brown:

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 N10036-1376 involving Deepwater Horizon. 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 N10036-1376.

Mail reconsideration requests to:

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


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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1376
Claimant	Marcus C. Brown
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,800.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 08 September 2011, Marcus C. Brown (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,800.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a seasonal worker who worked for Glade Precooler, Inc. (Glade) in Pahokee, Florida, as a forklift operator.¹ Glade operates a storehouse that refrigerates farm produce before shipping it.² Glade operates on a seasonal basis from October through May of each year.³ Glade maintained an open position for the Claimant at the beginning of May 2010.⁴ Instead, the Claimant chose to work for an oil spill response contractor.⁵

The Claimant worked for Rio-Bak Corporation (Rio Bak), an oil spill response contractor, in Santa Rosa Beach, Florida, from June through August of 2010.⁶ After August of 2010, he worked at another seasonal job with South East Employee Leasing Service (South East), a temporary employment agency. South East placed the Claimant with its client, Long Wolf, a company in the sugar cane industry.⁷

¹ Based on telephone conversation between the Claimant and the NPFC staff person on 27 September 2011

² Based on telephone conversation between the Claimant and the NPFC staff person on 27 September 2011

³ Based on telephone conversation between Glade Precooler, Inc. office person and the NPFC staff person on 27 September 2011.

⁴ Based on telephone conversation between the Claimant and the NPFC staff person on 27 September 2011

⁵ Based on telephone conversation between the Claimant and the NPFC staff person on 27 September 2011

⁶ Based on telephone conversation between the Claimant and the NPFC staff person on 27 September 2011

⁷ Handwritten letter from Claimant dated 14 July 2011 explaining his claim

The Claimant stated that his loss of earnings is due to the oil spill because his response work with Rio-Bak ended sooner than he was promised by the company.⁸ He stated that Rio-Bak had promised him that it had enough work to employ him for two years.⁹ The Claimant seeks \$15,800.00 based on his average weekly earnings at Rio-Bak for a six-month period.¹⁰

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.
- (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—

⁸ Telephone conversation between the Claimant and the NPFC staff on 27 September 2011

⁹ Telephone conversation between the Claimant and the NPFC staff on 27 September 2011

¹⁰ Based on telephone conversation between the Claimant and the NPFC staff person on 27 September 2011

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 14 July 2011
- W-2 Wage and Tax Statement from South East Employee Leasing Service for 2010
- W-2 Wage and Tax Statement from Rio-Bak Corporation for 2010
- Pay stub from Labor Finder dated 06 June 2008
- Letter from Glades Precooler, Inc. from Debra Palmer, Human Resources, dated 13 June 2011 concerning employment availability
- Handwritten letter from Claimant dated 14 July 2011 explaining his claim
- Payroll ledger for Claimant from Glades Precooler, Inc. for the period 01 January 2009 to 31 December 2011. One pay check dated 26 May 2011.
- NPFC Claimant's Guide dated April 2003
- GCCF Claim Form 2000-C Gulf Coast Claims Facility Claim Form for Six Months Emergency Advance undated

On 14 September 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 27 September 2011, the Claimant responded by phone to the request.¹¹

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF. The claim was assigned Claimant ID #3070099 and claim #124578. The EAP claim was denied on 20 October 2010.¹² Additionally, Claimant filed a Full Review Final (FRF) claim with the GCCF. The claim was assigned claim #9259050. The FRF claim was denied on 09 June 2011.¹³

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of either the EAP or FRF claim as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the

¹¹ Telephone conversation between the Claimant and the NPFC staff on 27 September 2011

¹² GCCF Denial Letter dated 20 October 2011

¹³ GCCF Denial Letter dated 09 June 2011

Responsible Party and to the extent the amount of the claims presented to the RP are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1376 considers and addresses the loss of earnings up to the amount of \$15,800.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #124578 EAP and #9259050 FRF.

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 Claimant stated that he lost earnings due to the oil spill.¹⁴ Specifically, he stated his loss consisted of the wages that he would have earned if the oil spill response work had not ended sooner than promised.¹⁵ Even though Rio-Bak Corporation, the contractor, allegedly promised two years of work, the Claimant has not provided evidence that the work was guaranteed. A job was available to the Claimant at Glades Precoller, Inc. at the time of the oil spill, but he chose to work on the oil spill response.¹⁶ In light of the foregoing, rather than suffering a loss of profits or impairment of earnings capacity as a result of the oil spill, the Claimant actually gained earnings by working as an oil spill responder despite the duration being shorter than hoped for. The fact that Rio-Bak may have terminated the Claimant's employment earlier than promised does not constitute a compensable loss under OPA.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged 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 a discharge of oil.

Claim Supervisor:	 <i>Claims Adjudication Division</i>
Date of Supervisor's Review:	<i>3 October 2011</i>
Supervisor's Action:	<i>Denial approved</i>
Supervisor's Comments:	

¹⁴ OSLTF Claim Form signed by Claimant 14 July 2011

¹⁵ Telephone conversation between the Claimant and the NPFC staff on 27 September 2011

¹⁶ Telephone conversation between the Claimant and the NPFC staff on 27 September 2011