

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
Claim # N10036-1206
15 August 2011

Mr. Joshua Carden


Re: Claim Number: N10036-1206

Dear Mr. Carden:

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 N10036-1206 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 N10036-1206.

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 Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1204
Claimant	Mr. Joshua R. Carden
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$7,500.00

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 27 May 2011, Mr. Joshua Carden (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$7,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, Claimant was a college student in Texas and planned to return home to Elberta, Alabama during winter and summer breaks to work for his family's business, Advanced Metal Systems.² Following the oil spill, the Claimant alleged that he was unable to return home for the summer, and had to stay in Texas to work. Claimant alleged that this resulted in a loss of income in the amount of \$7,500.00.³

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

¹ Optional OSLTF Claim Form dated 12 May 2011.

² Letter from Claimant to GCCF, 3 January 2011.

³ Optional OSLTF Claim Form dated 12 May 2011.

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 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:

- Optional OSLTF Claim Form, dated 12 May 2011;
- In Re: Oil Spill by "Deepwater Horizon" Direct Filing Short Form;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 16 April 2011;
- Letter from GCCF, requesting additional financial documentation, 31 January 2011;
- Letter from Claimant to GCCF, dated 3 January 2011;
- Letter from Claimant's employer to GCCF, 4 January 2011;
- Chart showing Claimant's earnings history, 4 January 2011;
- 2009 W-2 Form, showing earnings of \$7,236.00;
- 2010 W-2 Form, showing earnings of \$3,964.50;
- Copy of GCCF Interim Payment Claim Form;
- 2008 Form 1040;
- 2008 Form W-2 showing wages of \$3,713.00;
- 2009 Form 1040;
- 2009 Alabama Form 40v;
- 2009 Alabama Form 1064;
- 2010 Form 1040;
- 2010 Alabama Form 40v;
- 2010 Form 1098-T.

On 3 January 2011, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF for lost profits and earnings in the amount of \$7,500.00.⁴ Claimant was assigned Claimant ID 01024142 and ICQ12011 was assigned claim # 9185198. This claim was denied on 15 April 2011.

On 27 May 2011, Claimant presented this claim to NPCF for \$7,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because this claim has been properly presented to first to the RP/GCCF, and covers the same subject matter as that now before the NPFC, this summary determination addresses Claimant's loss of profits claim for \$7,500.00 as presented in Claimant's ICQ12011 and now to the NPFC.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his 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 his claim.

The NPFC reviewed all information and documentation provided by the Claimant. The Claimant has not provided documentation to indicate (1) that he was employed at the time of the oil spill, (2) that he sustained a financial loss, or (3) that any loss he may have sustained was a result of the Deepwater Horizon oil spill.

In his submission to the NPFC, the Claimant stated that he was unable to return to work at his family business in Elberta, AL during his summer break from college, due to the company's lack of work.⁵ As a result, the Claimant asserted that he decided to stay in Texas for the summer to work.⁶

Furthermore, W-2 Forms provided by the Claimant indicate that he earned \$3,713.00 in 2008, \$7,236.00 in 2009 and \$3,964.50 in 2010 at Advanced Metal Systems. These numbers do not indicate that the Claimant had a history of regular earnings on which to base his claim for lost profits in the amount of \$7,500.00. Furthermore, the Claimant's 2010 IRS Form 1040 indicates that his earnings from alternate employment exceeded his historical earnings from Advanced Metal Systems.⁷

Additionally, the Claimant was not an employee with Advanced Metal Systems at the time of the oil spill. OPA requires that the Claimant demonstrate that his "income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources."⁸ The fact the Claimant did not return to his position with Advanced Metal Systems during the summer of 2010 does not indicate that the Claimant's income was either lost or reduced because the Claimant was not actually working for the company at the time of the oil spill.

The Claimant has not provided documentation to indicate a causal link between the oil spill and any financial loss he alleged to have incurred. The Claimant alleged that the oil spill resulted in a generally poor economy in Elberta, AL, which led to an impact on the business and

⁴ GCCF Interim Payment Claim Form, at 7, 3 January 2011.

⁵ Letter from Claimant to GCCF, 3 January 2011.

⁶ Letter from Claimant to GCCF, 3 January 2011.

⁷ 2010 IRS Form 1040 indicates earnings of \$6,154.00 from alternate sources of employment as well as \$3,965.00 from Advanced Metal Systems.

⁸ 33 C.F.R. § 136.233(b)

subsequently, the Claimant's loss of income. However, he did not provide any evidence that the business was impacted, either directly or indirectly as a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained an actual loss of \$7,500.00 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: *8/15/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: