

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
Claim # N10036-1207
10 August 2011

Valerie Benjamin


Re: Claim Number: N10036-1207

Dear Ms. Benjamin:

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 N10036-1207 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 N10036-1207.

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	N10036-1207
Claimant	Valerie Benjamin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$5,000.00

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 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 11 June 2011, Ms. Valerie Benjamin (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant originally alleged that she got sick from “eating seafood” and was unable to work.² The NPFC informed the Claimant that personal injury claims resulting from the Deepwater Horizon oil spill are not compensable under OPA, in a letter dated 11 June 2011.

The Claimant then resubmitted her claim on 4 August 2011, seeking \$5,000.00 in lost profits and impairment of earnings capacity. The Claimant alleged that she was laid off from her position with Belle Teche Nursing due to “patients not being admitted” and a general decline in business, which the Claimant attributed to the Deepwater Horizon oil spill.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.

¹ Optional OSLTF Claim Form dated 26 May 2011.

² Optional OSLTF Claim Form, received 11 June 2011.

³ Optional OSLTF Claim Form, received 4 August 2011.

- (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—

- (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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 3 August 2011;
- Monetary Determination, 15 February 2011;
- Letter from Claimant, describing loss, undated;
- Optional OSLTF Claim Form, undated; and
- Record of insurance benefits payment, showing disability for sickness payments totaling 900.00, 12 August 2010.

Prior to presentation to the NPFC, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF for personal injury damages and was assigned Claimant ID 3475301 and claim number 9103534. The Claimant then presented two Full Review Final (FRF) claims, which were assigned claim numbers 9068972 and 9177629.

The Claimant's ICQ12011 was denied on 28 July 2011 and FRFs were denied on 31 January 2011. On 11 June 2011, the Claimant presented a claim for personal injury and lost profits damages in the amount of \$8,500.00 to the NPFC. The NPFC responded on 11 June 2011 to inform the Claimant that personal injury claims cannot be charged against the OSLTF.

On 4 August 2011, the Claimant presented this claim for 5,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. This NPFC determination will only address this claim to the extent that it has previously been presented to the GCCF.

Therefore, this determination addresses only the Claimant's alleged lost profits in the amount of 5,000.00, as currently before 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 the 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 the claim.

The NPFC reviewed all information and documentation provided by the Claimant. The Claimant has not provided any documentation that would show either (1) that she sustained a financial loss in the amount of \$5,000.00, or (2) that any loss the Claimant sustained was a result of the Deepwater Horizon oil spill.

The Claimant stated that she was laid off from her position with Belle Teche Nursing due to the business' decline following the oil spill.⁴ The NPFC contacted the Claimant's employer to verify the Claimant's assertion. Melissa, a representative of Belle Teche, informed the NPFC that the Claimant was not laid off due to the oil spill and stated that the oil spill had no affect on Belle Teche, which is a nursing home.⁵ A day after the NPFC spoke with Melissa of Belle Teche, the Claimant submitted an unsigned letter from Melissa on Belle Teche letterhead stating the Deepwater Horizon oil spill as the reason she was let go.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

This claim is denied because the Claimant failed to meet her burden to (1) demonstrate that she sustained a financial loss in the amount of \$5,000.00, (2) demonstrate that any loss sustained was a result of the Deepwater Horizon oil spill, and (3) because the evidence presented in the claim by the Claimant vice the information provided by Melissa of Belle Teche Nursing as outlined above clearly demonstrates evidence of a material misrepresentation of fact.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/10/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ Optional OSLTF Claim Form dated 3 August 2011.

⁵ PHONECON: Belle Teche Nursing Representative and NPFC Staff, 9 August 2011.