

U.S. Department of
Homeland Security

**United States
Coast Guard**



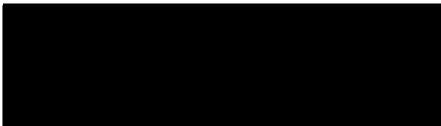
Director
United States Coast Guard
National Pollution Funds Center

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5890
9/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 8611

Kwasi Antwi Darko



RE: Claim Number: N10036-1274

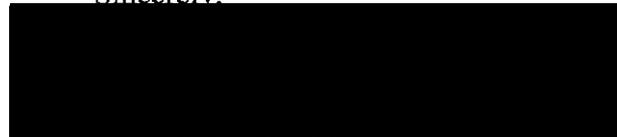
Dear Mr. Darko:

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 claim number N10036-1274 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1274
Claimant	: Kwasi Antwi Darko
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$13,320.00

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 5 August 2011, Mr. Kwasi Darko (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$13,320.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant worked as a “houseman” for a labor contracting company, Geo Alliance Group, LLC, from 05 August to 25 August 2010² and alleged that he was let go as a result of the oil spill. The Claimant then moved to Georgia, where he continued to have difficulty finding work and later returned to Panama City, and began working in May of 2011.

The Claimant seeks damages to cover the cost of his relocation, and lost earnings during his period of unemployment, from 25 August 2010 to May 2011, in the amount total of \$13,320.00³.

REQUEST FOR RECONSIDERATION:

On August 26, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on August 10, 2011 because the Claimant failed to prove that he suffered a loss of profits as a result of the Deepwater Horizon Oil Spill. In order to prove a claim for lost profits and earnings capacity under OPA, the Claimant must show (1) that he sustained a financial loss, and (2) that the loss was a result of the Deepwater Horizon oil spill.

The Claimant worked as a contract laborer for Geo Alliance Group, LLC and had a temporary job working as a “Houseman”⁴ for Boardwalk Condominiums from 05 August 2010 to 25 August 2010.⁵ A representative of Boardwalk Condominiums stated that no employees were let

¹ Optional OSLTF Claim Form dated 26 May 2011.

² Letter from Claimant to NPFC, 28 July 2011.

³ *Id*

⁴ Letter from Claimant to NPFC, dated 28 July 2011.

⁵ PHONECON: Claimant and NPFC Staff, 8 August 2011.

go as a result of the oil spill, and the Claimant was part of a labor contracting group that occasionally worked for the condominium complex.⁶

After the Claimant's job with Boardwalk Condominiums ended, the Claimant could not secure other work and subsequently relocated to Georgia where he was unable to find steady work.⁷ The Claimant's inability to find employment in Georgia cannot be attributed to the oil spill. Furthermore, the Claimant's position as a contract laborer for Geo Alliance Group, LLC did not guarantee him any particular salary for any stated amount of time.

Additionally, the income tax returns filed jointly with his wife, indicated that the Claimant and his wife reported the same income in 2009 and 2010.⁸ Because the Claimant (1) has no history of prior earnings on which to base his loss, (2) was not guaranteed employment as a contract laborer, and (3) because the Claimant's relocation to Georgia did not qualify as a loss, the Claimant did not sufficiently demonstrate that he suffered a financial loss as a result of the discharge or substantial threat of discharge of oil.

This claim was denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss of \$13,320.00, and (2) that the alleged loss was 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.

Prior to presentment to the NPFC, the Claimant presented a Third Quarter Interim Payment Claim (ICQ32011) to the RP/GCCF. The Claimant was assigned Claimant ID 3506390 and ICQ32011 was assigned claim # 9416479. This claim was denied by the RP/GCCF on 19 July 2011.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on August 26, 2011. The Claimant provided a six page type written document along with a copy of his CBP Form I-94 which shows he arrived in the US on January 27, 2010.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a Claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

⁶ PHONECON: Boardwalk Condominium Representative and NPFC Staff.

⁷ Letter from Claimant to NPFC, dated 28 July 2011.

⁸ 2009, 2010 Form 1040 indicate 2010 adjusted gross income of \$24,037 and 2009 adjusted gross income of \$24,035.00.

The NPFC performed a complete review of the documentation presented by the Claimant. In the Claimant's request for reconsideration, he provided a six page type written document along with a copy of CBP Form I-94 which shows he arrived in the US on January 27, 2010.

The Claimant's request for reconsideration makes the following assertions:

1. The Claimant asserted that in the NPFC's initial denial determination, it stated that he was a contract worker with Geo Alliance Group, LLC. The Claimant goes on to say that the NPFC's denial also indicated that the NPFC spoke with a representative from Boardwalk Condominiums (the company his temporary employment agency was servicing) who stated that no one was let go as a result of the oil spill. It appears that the Claimant feels that the NPFC later considered him an employee of Boardwalk Condominiums.

It is important to note that the NPFC understands that the Claimant was hired by Geo Alliance Group, LLC as a contract worker in August 2010 after the BP oil well was capped and the Claimant only worked for approximately 20 days in total. The Claimant was placed at Boardwalk Condominiums performing daily work. Based on information the NPFC obtained from Boardwalk, it is apparent that while individuals employed by Geo Alliance Group worked at the Boardwalk location, at no time did Boardwalk release employees or temporary contract workers because of the oil spill.

2. The Claimant asserted that he was not necessarily asking to be compensated for his inability to find a job in Georgia as referenced in the NPFC's initial denial determination but rather compensation for the duration of time he was without work. He argued that our denial determination made it sound like he was just unlucky. He requests the NPFC re-examine this part of his claim.

Upon review of what the Claimant asked for, the NPFC notes that on page 6 of the Claimant's letter in the original claim submission it states ..."Expenses for my relocation to Georgia in search of job roughly put me at \$1,800 before I had a part time job." Based on this statement and the evidence presented, the Claimant did ask for \$1,800.00 but failed to produce sufficient evidence to substantiate the requested amount.

3. The Claimant asserted that with respect to his tax issue, he did not arrive to the United States until December 2009 and his position with Geo Alliance Group was his first job in America and he further stated that his personal opinion is that our office is dealing with victims of an accident in order to reinstitute them back to a normal life therefore the fact that we confirmed his employment with Geo Alliance Group should be sufficient for his claim. Furthermore, the Claimant stated that his fellow contract laborers filed claims and received compensation not to mention that Geo Alliance Group may have filed a claim and got paid. The Claimant stated that it is painful and inhumane for our office to rely on a past work history when he was a victim.
4. Lastly, the Claimant asserted that the NPFC's initial denial determination stated that his employment as a contractor was not guaranteed employment, which he adamantly disagrees with. The Claimant argued that irrespective of guaranteed employment or not, his ability to make a certain amount of money weekly is in itself guaranteed income.

It must be noted that compensation from the Fund is for a proven loss of income and is not available based on an ability to work for a certain amount of weekly wages.

While the Claimant made several arguments on reconsideration, he provided no new information to substantiate his alleged loss other than a copy of his CBP Form I-94 which shows the date the

Claimant arrived in the United States. The Claimant did not provide any new information to demonstrate that his alleged loss was 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. This claim is again denied on two grounds. First, the Claimant failed to demonstrate that he sustained a financial loss in the amount alleged. Second, the Claimant has based his alleged loss on prospective work with Geo Alliance who employs temporary contract workers with no guarantee of work; there is no evidence that his loss of temporary employment with Geo Alliance was due to the Deepwater Horizon oil spill.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *9/08/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: