

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 1888

5890/DWHZ
Claim # N10036-1296
12 September 2011

La'Quisha M. Sylvester


Re: Claim Number: N10036-1296

Dear Ms. Sylvester:

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 your claim number N10036-1296 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1296.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1296
Claimant	La'Quisha M. Sylvester
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings 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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 11 August 2011, La Quisha M. Sylvester (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$5,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant worked at an IHOP restaurant in New Orleans, Louisiana.¹ Claimant asserted that due to the Deepwater Horizon oil spill, IHOP could not acquire seafood from the Gulf of Mexico and as a result, reduced the Claimant's hours.² The Claimant stated that she was not officially laid-off due to the oil spill, but over an eight month period her hours were reduced significantly enough that she was effectively laid-off.³ As a result of her reduced hours, the Claimant asserted she lost income.⁴

The Claimant did not provide a calculation for her sum certain of \$5,000.00 in loss of profits and impairment of earnings capacity.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

¹ PHONECON between NPFC and Claimant dated 15 August 2011.

² PHONECON between NPFC and Claimant dated 15 August 2011.

³ PHONECON between NPFC and Claimant dated 15 August 2011.

⁴ Optional OSLTF Claim Form received 11 August 2011.

- (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 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 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

In support of her claim, Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form received 11 August 2011;
- Hand-written list of monthly earnings for the period January 2008-December 2008, January 2009-December 2009, January 2010-December 2010;
- 2010 1040 Federal tax form;
- 2010 W-2 Federal tax form from Rub V. LLC d/b/a IHOP 3257;
- Delgado Community College tuition statement;
- 2010 W-2 Federal tax form from P.V.S. Inc. d/b/a Subway;
- Claimant's class registration list;
- Delgado Community College Office of Testing and Assessment Placement Test Results;
- 2009 W-2 Federal tax form from AFC Enterprises.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Month Claim with the GCCF on 02 October 2010 in the amount of \$7,000.00 for loss of profits and impairment of earnings capacity.⁵ The Claimant was assigned Claimant ID # 3083086 and Claim ID # 137563. The EAP Claim was denied on 06 December 2010.⁶ Additionally, the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011a) with the GCCF on 31 December 2010 in the amount of \$7,800.00 for loss of profits and impairment of earnings capacity.⁷ The Claimant was assigned Claim ID

⁵ Report from the GCCF dated 07 September 2011.

⁶ GCCF Denial Letter dated 06 December 2010.

⁷ Report from the GCCF dated 07 September 2011.

9112464. The ICQ12011a was issued a no loss determination on 17 May 2011.⁸ Additionally, the Claimant filed an Interim Payment Claim Quarter 1 2011 (ICQ12011b) with the GCCF on 31 December 2010 in the amount of \$1,600,000 in loss of subsistence use.⁹ The Claimant was assigned Claim ID # 9112464. The ICQ12011b Claim was denied on 17 May 2011.¹⁰ Additionally, the Claimant filed a Full Review Final (FRFa) Claim with the GCCF on 31 December 2010 in the amount of \$7,800,000.00 for loss of profits and impairment of earnings capacity.¹¹ The Claimant was assigned Claim ID # 9111763. The FRFa Claim was denied.¹² Additionally, the Claimant filed a Full Review Final (FRFb) Claim with the GCCF on 31 December 2010 in the amount of \$1,600,000.00 for loss of subsistence use.¹³ The Claimant was assigned Claim ID # 9111763. The FRFb was denied.¹⁴

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims regarding loss of profits and impairment of earnings capacity is the same as the subject matter of the Claimant's claim before the NPFC, i.e., that the Claimant's working hours at IHOP were reduced and by extension the Claimant lost income in 2010 due to the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claims regarding loss of profits and impairment of earnings capacity to be properly presented to the RP and properly presented to the NPFC. Regarding the GCCF claims for loss of subsistence use, the Claimant did not present this subject matter to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1296 considers and addresses the earnings claimed in the claims presented to the responsible party up to \$5,000.00 for loss of profits and earnings capacity only, specifically; GCCF Claim #'s 137563 (EAP), 9112464 (ICQ12011a) and 9111763 (FRFa).

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 the 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 asserted that the Deepwater Horizon oil spill resulted in her experiencing reduced hours at IHOP in New Orleans, Louisiana where she worked. The Claimant's documentation consisted of an unsigned copy of her 2010 Federal tax return and a hand-written list of monthly earnings.

The Claimant, however, failed to provide a connection between her alleged loss with the Deepwater Horizon oil spill. The Claimant has not demonstrated that the oil spill was the cause of any particular reduction in working hours at IHOP. Accordingly, the Claimant has not shown that her losses were a direct result of the Deepwater Horizon oil spill as opposed to other factors such as cost-cutting decisions by IHOP to reduce expenses.

Should the Claimant decide to request reconsideration, in order to prove a claim for loss of profits and impairment of earning capacity damages, the Claimant must demonstrate (1) that she suffered an actual financial loss in the amount alleged, and (2) that the loss was the result of the Deepwater Horizon oil spill. It is also important to note that the Claimant has provided only one year of comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states... "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" therefore the Claimant will

⁸ GCCF Determination Letter on Interim Payment dated 17 May 2011.

⁹ Report from the GCCF dated 07 September 2011.

¹⁰ GCCF Determination Letter on Interim Payment dated 17 May 2011.

¹¹ Report from the GCCF dated 07 September 2011.

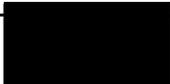
¹² Report from the GCCF dated 07 September 2011.

¹³ Report from the GCCF dated 07 September 2011.

¹⁴ Report from the GCCF dated 07 September 2011.

need to provide her 2008 and 2009 complete income tax returns along with documentation from her employer that corroborates her assertions.

Based on the forgoing, this claim is denied because the Claimant failed to meet her 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: *NPFC Claims Adjudication Division* 

Date of Review: *9/12/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: