

U.S. Department of
Homeland Security

**United States
Coast Guard**

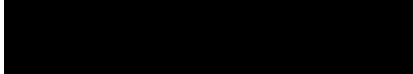


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
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5890/DWHZ
Claim# N10036-1302
18 August 2011

Ana Nava Sanchez


RE: Claim Number: N10036-1302

Dear Ms. Sanchez:

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 N10036-1302 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. 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 N10036-1302.

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	N10036-1302
Claimant	Ana Nava Sanchez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$20,000.00

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 15 August 2011, Ana Nava Sanchez (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$20,000.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant alleged damages due to being laid off as a result of the Deepwater Horizon oil spill. Claimant stated she worked for Staff Pro, LLC in Gulfport, Mississippi, from January 2010 until either September or October 2010.¹ Her job was cleaning rooms in hotels along the beach. Claimant stated she has been unable to find a job since being terminated and has not collected any unemployment.²

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.

¹ Telephone conversation between Claimant and NPFC staff 16 August 2011

² Ibid.

- (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-

- (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 her claim, Claimant submitted

- 1) OSLTF claim form dated 03 August 2011
- 2) 2008 W-2 from Shular Contracting, Inc.
- 3) 2009 W-2 from Ramos Maintenance Service, Inc.
- 4) 2010 W-2 from Staff Pro LLC
- 5) Copy of IRS Individual Taxpayer identification Number
- 6) Copy of Honduras Licencia Internacional Liviana

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$20,000.00.

Prior to presenting her claim to the NPFC, Claimant filed a Full Review Final claim (FRF) with the GCCF and was assigned Claimant ID #3490328 and claim #9234961.³ The claim was denied on 26 May 2011.⁴ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claim is the same as the subject matter of her claim before the

³ GCCF Online Status Report

⁴ GCCF Denial Letter dated 26 May 2011

NPFC, i.e., that she lost her job as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1302 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically: GCCF Claim # 9234961 (FRF).

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that their 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

Claimant alleged she lost her job from Staff Pro, LLC in September or October 2010. The NPFC staff called Staff Pro, LLC on 15 August 2011.⁵ A Human Resources Attendant at Staff Pro, LLC stated that the Claimant quit her job in February 2010 due to her daughter's illness and the Claimant's need to care for her.⁶ The NPFC is unable to substantiate the evidence submitted by the Claimant in light of Pro Staff's statements. To the contrary, the Claimant's statements to the NPFC appear to constitute a misrepresentation of fact. Furthermore, the Claimant failed to provide any documentation to evidence that she could not obtain employment after her job with Staff Pro, LLC ended. As such, the Claimant has failed to establish any quantifiable loss of profits or impairment of earnings capacity as a result of the oil spill.

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 the burden to demonstrate (1) that there was an alleged loss in the amount claimed, (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, and (3) the Claimant provided false information with respect to her loss of employment with Staff Pro, LLC which constitutes evidence of a material misrepresentation of fact.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/18/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ Telephone conversation between HR Attendant and NPFC staff 15 August 2011

⁶ Ibid.