

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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9/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1150 000 4666 8666

Elton Long



RE: Claim Number: N10036-1325

Dear Mr. Long:

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 N10036-1325 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	: N10036-1325
Claimant	: Elton Long
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$3,000.00

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 23 August 2011, Elton C. Long (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$3,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant, who worked as a server at Ryan's Restaurant (Ryan's) in Crestview, Florida, stated that Ryan's "suffered a severe drop in tourism which caused them to cut my hours and cause loss of tips due to the oil spill."¹ In July 2010, the Claimant left Ryan's to seek other work² and, in September of 2010, began work as a server at a restaurant in Jacksonville, Florida.³ The Claimant's submission only covers the Claimant's alleged loss of income and impairment of earnings capacity incurred while working at Ryan's. The claim includes the cost of gasoline that the Claimant has alleged that he incurred driving his car to look for work.

Before presenting the claim to the NPFC, the Claimant filed two Interim Payment claims with the GCCF. The claims were assigned Claimant ID #3488020 and claim #'s 9221525 (ICQ12011) and 9410982 (ICQ32011).⁴ The Interim Payment claims were denied on 20 July 2011 and 13 August 2011.⁵ Additionally, Claimant filed a Full Review Final claim with the GCCF. The claim was assigned claim #9442710. The Full Review Final claim remains under review by GCCF.⁶

REQUEST FOR RECONSIDERATION:

On September 6, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

¹ OSLTF Claim Form dated 22 August 2011

² Letter from the Claimant explaining the claim dated 21 July 2010

³ PHONECON between Claimant and NPFC Staff dated 23 August 2011

⁴ GCCF On-Line Claim Status on 26 August 2011

⁵ GCCF Denial Letters dated 20 July 2011 and 13 August 2011

⁶ GCCF On-Line Claim Status on 26 August 2011

The NPFC denied the claim originally on September 1, 2011 because the Claimant failed to meet the 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.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on September 6, 2011. The Claimant provided a typewritten one-page letter that requested his claim be reconsidered. The Claimant provided a complete duplicate copy of his original claim submission with his request reconsideration. The new information provided by the Claimant was a letter dated May 4, 2010 from Mr. Franco Simon, HR Services for Ryan's, that stated the Claimant has been an employee at the Crestview, FL Ryan's location for 2+ years and is an outstanding employee. The letter goes on to say that the Claimant is part of their wait staff and has suffered a severe decline in hours and tips due to the lack of customer traffic in the restaurant. Additionally, the Claimant's reconsideration request states that he is removing the cost associated with gas and stress since he has no documentation.

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 injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. 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.

The NPFC performed a complete review of the documentation presented by the Claimant. In the Claimant's request for reconsideration, he presented a one-page letter, a duplicate copy of his original claim submission and a copy of a letter dated May 4, 2010 from HR Services of Ryan's.

To support his contention that the oil spill caused his alleged damages, the Claimant provided a letter from his supervisor at Ryan's at the time of the oil spill.⁷ The letter stated in pertinent part that "[o]ur restaurant is currently suffering a decrease in tourism due to the BP oil spill in the Gulf Of Mexico" and "we are cutting Elton C. Long's hours..."⁸ The NPFC attempted on several occasions to contact the Claimant's supervisor in order to corroborate his claim, but the supervisor didn't respond as of the date of the initial denial determination.⁹ The Claimant also provided a letter from the Human Resource Service Representative at Ryan's corporate headquarters in Minnesota.¹⁰ The NPFC also contacted the Ryan's Human Resource Service

⁷ Letter from Jesse Wise at Ryan's explaining actions taken by Ryan's, undated

⁸ Letter from Jesse Wise at Ryan's explaining actions taken by Ryan's, undated

⁹ Messages by NPFC Staff to Jesse Wise dated 24 and 25 August 2011.

¹⁰ Letter from Leslie Hindahl, HR Service Representative at Ryan's, stating period of employment dated 26 April 2011

Representative, but the Representative stated that the corporate office had no knowledge as to the reason that the Claimant's hours were reduced.¹¹

On reconsideration, the Claimant stated that he contacted Mr. Wise from Ryan's and obtained permission for the NPFC to call him at work. The NPFC again tried to call Mr. Wise at both his personal number originally provided in his letter (850) 502-3367 and at his work number (850) 423-7160. The NPFC has been unsuccessful in reaching Mr. Wise.

Based on the evidence presented to the NPFC, the NPFC is unable to confirm that any reduced hours or tips were a direct result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil as opposed to other economic factors. It is also important to note that Ryan's Steakhouse is a buffet style restaurant and as such, tips are never a guaranteed wage and paid at the discretion of the patron therefore there is no way for the NPFC to confirm whether a reduction in tips was a result of the oil spill, quality of customer service, quality of the food, or reduced patronage to the restaurant in general.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor:  ~~Thomas Morrison~~

Date of Supervisor's review: *9/8/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

¹¹ PHONECON between NPFC Staff and Leslie Hindahl, HR Service Representative at Ryan's