

U.S. Department
of Homeland
Security

**United States
Coast Guard**

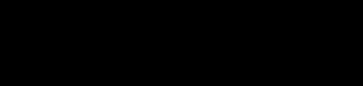


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2601

5890/DWHZ
25 October 2011

Dwayne Lloyd Duke


Re: Claim Number: N10036-1330

Dear Mr. Duke:

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 N10036-1330 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 N10036-1330.

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	N10036-1330
Claimant	Dwayne Lloyd Duke
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$40,000.00

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 24 August 2011, Dwayne Lloyd Duke (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$40,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is employed by Kevin Gros Offshore, LLC in Larose, Louisiana as a licensed engineer on offshore supply vessels.¹ Kevin Gros Offshore operates a fleet of offshore marine support vessels serving the Gulf of Mexico offshore oil and gas exploration and production industry.² Claimant asserted that, due to the Deepwater Horizon oil spill, there has been reduced demand for offshore work.³ Consequently, the Claimant has experienced a loss in income because both his work hours and pay rates have been reduced.⁴

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

¹ Letter from Kevin Gros Offshore to "Whom It May Concern," dated 1 February 2011.

² <http://www.kgoffshore.com/>

³ Handwritten letter of claim explanation from the Claimant to "Sirs," undated.

⁴ Handwritten letter of claim explanation from the Claimant to "Sirs," undated.

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:

- (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 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

The Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form, dated 23 August 2011;
- Denial Letter on Interim Payment/Final Payment Claim, dated 6 May 2011;
- Letter from Kevin Gros Offshore to "Whom It May Concern," dated 1 February 2011;
- Letter from the Claimant to the GCCF requesting photocopies of submitted documentation, dated 11 August 2011;
- GCCF Interim Payment claim Form, dated 21 April 2011;
- Florida Driver's License;

- Handwritten letter of claim explanation from the Claimant to "Sirs," undated;
- 2009 IRS Federal Tax Return Transcript;
- 2010 Form 1040X Amended Federal Income Tax Return;
- 2010 Form W-2 Wage and Tax Statement from Kevin Gros Offshore LLC;
- 2010 Form W-2 Wage and Tax Statement from L & M Botruc Rental Inc.;
- 2009 Form W-2 Wage and Tax Statement from L & M Botruc Rental Inc.;
- 2008 Form W-2 Wage and Tax Statement from L & M Botruc Rental Inc.;
- 2008 Form W-2 Wage and Tax Statement from Tidewater Marine LLC.;
- 2008 Form 1099-R from Merrill Lynch Bank & Trust Co.;
- Paystub from L & M Botruc Rental, check date 7 April 2009
- Paystub from Kevin Gros Offshore LLC, pay dated 5 April 2010;
- GCCF Cover Page titled "Supporting Documentation For a Claim";
- Typed letter of claim explanation from the Claimant, undated;
- 2009 Form 1040 Federal Income Tax Return;
- 2008 Federal Income Tax Return Recap; and
- 2008 Form 1040 Federal Income Tax Return.

Prior to presenting this Claim to the NPFC, Claimant filed an Interim 2 (ICQ22011) claim with the GCCF on 16 April 2011 in the amount of \$30,000.00.⁵ He was assigned Claimant ID # 1622123 and Claim # 9358056. This claim was denied by the GCCF on 6 May 2011.⁶ Based upon the evidence provided by the Claimant, it appears that the subject matter of the Claimant's Interim 2 claim is the same as the subject matter of his claim before the NPFC, i.e., that his work hours and pay rate as an offshore engineer were reduced as a result of the Deepwater Horizon oil spill. The NPFC deems that the Claimant's Interim 2 claim was properly presented to the RP and properly presented to the NPFC up to \$30,000.00. Accordingly, this Claim Summary Determination for NPFC claim N10036-1330 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # 9358056 (ICQ22011).

NPFC Determination

The claim is denied. 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 considered all documentation presented by Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an Interim 2 claim to the GCCF in the amount of \$30,000.00. Claimant then presented a loss of profits and impairment of earnings capacity claim for \$40,000.00 to the NPFC. Any claimed amount of damages exceeding \$30,000 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant failed to prove he suffered a financial loss due to the Deepwater Horizon oil spill. In his submission to the NPFC, the Claimant

⁵ Report from the GCCF, dated 06 October 2011.

⁶ Denial Letter on Interim Payment/Final Payment Claim, dated 6 May 2011.

provided a letter from his employer, Kevin Gros Offshore, in support of his claimed loss.⁷ On 20 October 2011, the NPFC contacted Kevin Gros Offshore to confirm the authenticity of the letter and gather additional information regarding the Claimant's alleged loss. Kevin Gros Offshore confirmed writing the letter for the Claimant, as well as that work slowed down for the Claimant due to the Deepwater Horizon oil spill.⁸ The NPFC asked specifically how the oil spill caused the Claimant's loss and Kevin Gros Offshore indicated that the moratorium on drilling and the delays in permitting were the reason for the Claimant's loss.⁹ Consequently, the Claimant failed to prove that his alleged loss was a result of the Deepwater Horizon oil spill.

Because the Claimant has failed to (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), and (2) demonstrate that his 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, this claim is denied.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/25/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷ Letter from Kevin Gros Offshore to "Whom It May Concern," dated 1 February 2011.

⁸ PHONECON between the NPFC and Kevin Gros Offshore on 20 October 2011.

⁹ PHONECON between the NPFC and Kevin Gros Offshore on 20 October 2011.