

U.S. Department of
Homeland Security

United States
Coast Guard

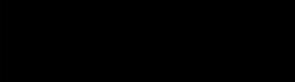


Director
United States Coast Guard
National Pollution Funds Center

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 2953

5890/DWHZ
Claim # N10036-1338
04 October 2011

Nary Hoeur


Dear Mr. Hoeur:

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 the claim number N10036-1338 involving Deepwater Horizon. Please see the attached 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 N10036-1338.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100


Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1338
Claimant	Nary Hoeur
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$18,000.00

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 25 August 2011, Nary Hoeur (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$18,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked as a welder for Dynamic Industries, Inc.¹ where he worked on equipment used on offshore oil rigs.² The Claimant stated that he along with other workers were let go 28 May 2011 due to the oil spill.³ The Claimant alleged lost earnings from June 2010 through December 2010.⁴

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

¹ Telephone conversation between the Claimant and the NPFC Staff dated 25 August 2011

² Telephone conversation between the Claimant and the NPFC Staff dated 25 August 2011

³ Telephone conversation between the Claimant and the NPFC Staff dated 25 August 2011

⁴ OSLTF Claim Form signed by Claimant 08 June 2011

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.
- (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 this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 08 June 2011;
- Pay stub form Dynamic Industries, Inc. dated 21 April 2011;
- Hand-written letter from Claimant explaining his claim;
- IRS Tax Return Transcripts for years 2008, 2009 and 2010.

On 02 September 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter was mailed First-Class Certified Mail Return Receipt Requested.⁵ On 10 September 2011, USPS left a Notice for the Claimant that the letter was ready for pick up. As of this date, the Claimant has not picked up the Certified Letter.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 05 September 2011 in the amount of \$18,000.00.⁶ The claim was assigned Claimant ID #1090521 and claim #3003005. The EAP claim was denied on 17 November 2011.⁷ Additionally, Claimant filed an Interim Payment Claim (ICQ12011) with the GCCF.⁸ The ICQ12011 claim was assigned claim #9186324. The Claimant filed a Full Review Final (FRF) Claim with the GCCF on 13 January 2011. The FRF claim was assigned claim #9210401. The ICQ12011 and FRF Claims were denied on 27 May 2011.⁹

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1338 considers and addresses the loss of earnings up to the amount of \$18,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #3003005 (EAP), #9186324 (ICQ12011) and #9210401 (FRF).

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 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's federal income tax return for 2010 showed total income of \$27,445.00 and that figure included the Claimant's unemployment compensation.¹⁰ The Claimant's federal income tax return for 2009 showed total income of \$29,996.00.¹¹ The difference

⁵ USPS Certified Receipt Number 7011 1150 0000 4666 9731

⁶ Report from the GCCF dated 21 September 2011

⁷ Report from the GCCF dated 17 November 2011

⁸ Report from the GCCF dated 17 November 2011

⁹ GCCF Denial Letter dated 27 May 2011

¹⁰ IRS Tax Return Transcript for year 2010. \$21,023.00 for Wages and \$6,422.00 for Unemployment Compensation equals \$27,445.00 Total Income

¹¹ IRS Tax Return Transcript for year 2009

in income between 2009 and 2010 (\$2,515.00) does not support the \$18,000.00 loss of earnings asserted by the Claimant for the period from June 2010 to December 2010. Accordingly, the Claimant has not met his burden of proof as to his alleged losses.

The Claimant stated that he was laid off from Dynamic Industries, Inc. due to the oil spill.¹² However, the Claimant has not provided evidence sufficient to establish that his alleged loss of earnings was the result of the discharge or substantial threat of discharge of oil, as opposed to other factors such as declining market conditions or the federal oil drilling moratorium.

The NPFC Staff requested additional information in a letter to the Claimant dated 02 September 2011. Within the letter, the NPFC Staff requested a contact name at Dynamic Industries, Inc. in order to corroborate the claim. However, the US Postal Tracking System showed that a Notice was left on 10 September 2011 and the Claimant did not pick the letter up.¹³ NPFC staff also attempted to contact the Claimant by phone, but he did not respond with the information requested.¹⁴

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 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:  *Claims Adjudication Division*

Date of Supervisor's Review: *04 October 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² OSLTF Claim Form signed by Claimant 08 June 2011

¹³ USPS Certified Receipt Number 7011 1150 0000 4666 9731

¹⁴ NPFC Staff left voice messages for the Claimant on 31 August and 01, 26 and 27 September 2011