

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

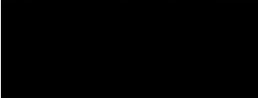


Director  
United States Coast Guard  
National Pollution Funds Center

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 4612

5890/DWHZ  
Claim # N10036-1366  
12 September 2011

DeAnna Hughes  


Dear Ms. Hughes:

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 N10036-1366 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 N10036-1366.

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     | N10036-1366   |
| Claimant         | DeAnna Hughes                                       |
| Type of Claimant | Private (US)  |
| Type of Claim    | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$24,070.57   |

### ***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 02 September 2011, DeAnna Hughes (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$29,070.57 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked for Able Body Gulf Coast, Inc. (Able Body) in Mobile, Alabama, from January to July 2010.<sup>1</sup> She was a recruiter and sales representative. Able Body was a temporary employment agency and staffed workers in the construction industry. Able Body recruited, trained and staffed many workers on the oil spill clean-up. The Claimant worked many hours and expected to earn increased commissions.<sup>2</sup> In July 2011, the need for workers on the clean-up suddenly declined. The Claimant stated that "my company [began to] lay us off and filed bankruptcy."<sup>3</sup> The Claimant stated Able Body never paid her any commissions. Able Body closed and she cannot locate any of the owners.

While working at Able Body, the Claimant also worked part-time as a merchandiser stocking local stores.<sup>4</sup> When her work hours increased at Able Body, she was unable to work the part-time jobs. After she was laid off at Able Body, the part-time jobs were no longer available. The Claimant filed for unemployment compensation.<sup>5</sup> She sought employment and became employed about two months ago.<sup>6</sup>

The Claimant retained the services of an attorney. The attorney provided an explanation of her claim.<sup>7</sup> The Claimant has since terminated the services of the attorney.<sup>8</sup>

<sup>1</sup> GCCF Form 2000-I Interim Payment Form 05 May 2011

<sup>2</sup> This paragraph is based on a PHONECON between the Claimant and NPFC Staff 07 September 2011

<sup>3</sup> OSLTF Claim Form signed by the Claimant dated 30 August 2011

<sup>4</sup> Based on a PHONECON between the Claimant and NPFC Staff 07 September 2011 and W-2 Wage and Tax Statements for 2010 for Kellogg Sales Company, Ferrero Sales Co USA Inc and Ferrero USA Inc.

<sup>5</sup> Letter from the State of Alabama confirming Claimant registered for unemployment undated

<sup>6</sup> This paragraph is based on a PHONECON between the Claimant and NPFC Staff 07 September 2011

<sup>7</sup> Letter from Robert E. Rone, attorney, explaining the claim dated 11 April 2011

<sup>8</sup> Based on a PHONECON between the Claimant and NPFC Staff 07 September 2011

## ***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.
- (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 the Claimant dated 30 August 2011;
- Letter from Robert E. Rone, attorney, explaining the claim dated 11 April 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 21 May 2011;

- Contingent Fee Agreement with Robert E. Rone dated 05 May 2011;
- GCCF Form 2000-I Interim Payment Form 05 May 2011;
- Supplemental Page for Section II(A)(9) listing previous employers;
- Letter from the State of Alabama confirming Claimant registered for unemployment undated;
- Payment History from State of Alabama for unemployment claims 28 August to 13 November 2010;
- Payment History from State of Alabama for unemployment claims 20 November 2010 to 05 February 2011;
- Payment History from State of Alabama for unemployment claims 12 February to 30 April 2011;
- Listing of companies contacted for job search;
- W-2 Wage and Tax Statements for 2010 for Waffle House, Professional Staffing-ABTS Inc., Able Body Gulf Coast Inc., Kellogg Sales Company, Ferrero Sales Co USA Inc and Ferrero USA Inc.;
- Form 1040 US Individual Income Tax Return for 2008, 2009 and 2010;
- Various screen-prints on the State of Alabama unemployment claim.

Claimant seeks lost earnings and wages in the amount of \$24,070.57.

Before presenting the claim to the NPFC, the Claimant filed an Interim Payment Claim. The claim was assigned Claimant ID #1624751. The Interim Payment Claim was denied on 21 May 2011.<sup>9</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claim 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 claim to be properly presented to the Responsible Party and to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1366 considers and addresses the loss of earnings in all claims presented to the Responsible Party.

### **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 loss of earnings covers the period July 2010 through March 2011. The loss is based on the 34 weeks she worked before Able Body Gulf Coast laid her off in July 2011.<sup>10</sup> The Claimant provided no documentation to support the loss of earnings.

The Claimant's loss of earnings is due to the actions of Able Body and not the oil spill. Able Body chose to close its business and file for bankruptcy for unstated reasons. The Claimant stated that Able Body paid her no commissions which she was due. She cannot locate the owners of Able Body and could not provide documentation to show her loss was due to the oil spill.<sup>11</sup>

<sup>9</sup> GCCF Denial Letter dated 21 May 2011

<sup>10</sup> GCCF Form 2000-I Interim Payment Form 05 May 2011

<sup>11</sup> Based on a PHONECON between the Claimant and NPFC Staff 07 September 2011

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: *12 September 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments: