

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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5890/DWHZ
5/15/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3534

Tamika Lindsey


RE: Claim Number: N10036-1700

Dear Ms. Lindsey:

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 N10036-1700 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 N10036-0___.

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	: N10036-1700
Claimant	: Tamika Lindsey
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$26,902.00

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 1 March 2012, Tamika Lindsey (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$26,902.00 in loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant was a child care provider in Gulfport, MS. She alleges that the oil spill caused her to lose income and her business because the children's parents lost their jobs and could no longer pay her.¹

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 Optional OSLTF Claim Form dated 2/20/12.

- (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 the following:

- Optional OSLTF Claim Form
- April 6, 2011 letter regarding lack of tax ID number
- 2008 federal tax return transcript
- Partial 2009 form 1040 federal tax return
- Handwritten 2008 and 2009 statement of income
- Partial 2010 federal tax return
- July 1, 2011 letter summarizing claim
- June 29, 2011 letter from Eunice Lee
- June 29, 2011 letter from Michelle Harrien
- June 23, 2011 letter from Ken Robinson

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$26,902.00.

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF on August 23, 2010 in the amount of \$1,000.00.² She was assigned Claimant ID #1145647 and claim #1461. This claim was denied on November 12, 2010.³ Additionally, Claimant filed one Full Review Final claim with the GCCF, Full Review Final (FRF) Claim with GCCF #9017765; it was filed on November 15, 2010 for \$6,600.00. This claim was denied on August 18, 2011.⁴ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she lost income as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1700 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 1461 (EAP) and 9017765 (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 to 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 NPFC considered all the documentation submitted by the 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 a Final Claim in the amount of \$6,600.00 for loss of profits or impairment of earning capacity to the GCCF. The Claimant then presented a claim for loss of profits and impairment of earning capacity in the amount of \$26,902.00 to the NPFC. Any claimed amount of damages exceeding \$6,600.00 was not first properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and therefore, \$20,302.00 is denied.

On 3 April 2012, in connection with the review of this claim, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking website showed the letter was delivered 7 April 2012.⁵ To date no response has been received by the NPFC.

For the Claimant to be eligible for compensation from the OSLTF, she must demonstrate with documentary evidence that a natural resource or property was injured or destroyed by the Deepwater Horizon oil spill.⁶ Further, she must prove that her alleged lost income resulted from

² Report from the GCCF dated may 8, 2012.

³ GCCF Denial Letter dated November 12, 2010.

⁴ GCCF Denial Letter dated August 18, 2011.

⁵ USPS.com tracking result of label #7011 1570 0001 2446 3138.

⁶ CFR §136.233.

that injury to or destruction of property or a natural resource by the discharge of oil into a navigable water of the U.S.⁷

In an attempt to support her claim, the Claimant provided partial federal tax returns, handwritten monthly statements of income for the two years before the spill, and three letters from clients. However, without complete financial documentation and proof that her alleged loss resulted from the oil spill, she has not proven by a preponderance of the evidence that she had a loss, the amount of her alleged loss, or that her alleged loss resulted from the oil spill into the Gulf of Mexico.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/15/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷ CFR §136.233.