

U.S. Department of
Homeland Security

**United States
Coast Guard**

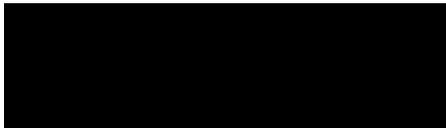


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2179

5890/DWHZ
16 April 2012

Latisha McWilliams


Re: Claim Number: N10036-1708

Dear Mr. Barksdale:

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 N10036-1708 involving the Deepwater Horizon oil spill. 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 N10036-1708.

Mail reconsideration requests to:

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

Sincerely,


National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CC: Latisha McWilliams
100 Redwood Circle Apt. #203
Pensacola, FL 32506
CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 5002

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1708
Claimant	Latisha McWilliams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$36,891.49

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 6 March 2012, Arthur S. Barksdale, Esq., on behalf of Ms. Latisha McWilliams, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$36,891.49 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working at a McDonald's franchise in Pensacola, Florida until allegedly being "released" from her employment on 10 August 2010.² The Claimant included a letter in her submission to the NPFC, which stated that,

[t]he BP oil spill caused a serious loss of business to the local business community in 2010. Due to the reduction in sales, we were forced to reduce the number of hours given to our crewmembers. [The Claimant] was affected by these cuts and her hours were reduced drastically. Therefore, she was forced to seek other employment opportunities, as we could not fulfill her request to regain hours.³

The Claimant also stated that since she lost her position with McDonald's in 2010, she has not worked and remains unemployed.⁴ The Claimant alleged to have sustained an actual loss of income throughout 2010 and 2011 of \$16,770.00, and requests a final payment of \$36,894.00.⁵

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 § 2702(b) of OPA.

¹ Letter from the Claimant's attorney to the NPFC, 6 August 2012.

² Letter from the Claimant, describing losses, undated.

³ Letter from the Claimant's employer, undated.

⁴ Letter from the Claimant to the NPFC, describing losses.

⁵ Lost Earnings/Income Worksheet.

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, the Claimant submitted the following documentation:

- Letter from the Claimant's attorney to the NPFC, 6 March 2012;
- NPFC Authorization Agreement;
- GCCF Determination Letter on Interim Payment/Final payment Claim, 7 November 2011;
- GCCF Final Payment Election Form;
- GCCF Full Review Final Payment Claim Form;
- List of places where the Claimant sought employment throughout 2011;
- Letter from Suzanne Johnson, Nowak Enterprises, 16 November 2011;
- Lost Earnings/Income Worksheet;

- 2009 Form W-2 Wage and Tax Statement;
- 2010 Form W-2 Wage and Tax Statement;
- Copy of the Claimant's driver's license;
- Letter from the Claimant describing losses, undated;
- Letter from Edna Austria, general manager, McDonald's, undated;
- 2008 Tax Return Transcript, showing wages of \$9,848.00;
- GCCF Client Authorization Form, 24 August 2011;

Prior to presentment of this claim to the NPFC, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF seeking loss of profits damages in the amount of \$40,793.59.⁶ The Claimant was assigned Claimant ID # 3400741 and the FRF claim was assigned claim # 9337705.⁷ In a letter dated 7 November 2011, the Claimant was awarded an interim payment of \$3,902.10, and was offered final payment of \$5,000.00.⁸

On 6 March 2012, the Claimant submitted this claim to the NPFC, seeking \$36,891.49.00 in loss of profits and impairment of earning capacity damages.⁹ The NPFC may adjudicate this claim to the extent that these damages have first been presented to and either denied by, or unsatisfactorily determined by, the RP/GCCF.¹⁰ Because the RP/GCCF has issued a determination on this claim for damages as now presented to the NPFC, the NPFC may fully adjudicate this claim in the amount of \$36,891.49.¹¹

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, destruction or loss of real or personal property or of 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 this claim.

In support of this claim, the Claimant included two letters regarding the Claimant's employment with a McDonald's franchise in Pensacola, Florida.¹² The first letter, signed by a representative of Nowak Enterprises¹³, stated that the Claimant was last employed by the company on 5 August 2010. The second letter, written on McDonald's letter head, contains a statement allegedly made by the restaurant manager regarding the "drastic reduction" in the Claimant's working hours as a result of the Deepwater Horizon oil spill.

In the course of review of this claim, the NPFC contacted the individuals who allegedly provided these letters. A representative of Nowak Enterprises stated that the Claimant voluntarily left McDonald's employment to pursue other work.¹⁴ The representative further stated that the Claimant was not let go, nor were her hours reduced as a result of the oil spill.¹⁵

⁶ GCCF Full Review Final Payment Claim Form- Page 7.

⁷ GCCF Determination Letter on Interim Payment/Final Payment Claim, 7 November 2011.

⁸ GCCF Determination Letter on Interim Payment/Final Payment Claim, 7 November 2011.

⁹ Optional OSLTF Claim Form, signed on 12 January 2012.

¹⁰ 33 C.F.R. § 136.103(a).

¹¹ 33 C.F.R. § 136.103(a).

¹² The Claimant was employed at the McDonald's located at 407 Brent Lane, Pensacola, FL.

¹³ Nowak Enterprises owns the McDonald's franchise where the Claimant was employed.

¹⁴ PHONECON: NPFC Staff and representative, Nowak Enterprises, 15 March 2012.

¹⁵ PHONECON: NPFC Staff and representative, Nowak Enterprises, 15 March 2012.

Furthermore, the NPFC confirmed that the statement written on McDonald's letterhead had not been written by the manager whose name appears on the letter.¹⁶ The manager had no knowledge of the letter, and confirmed that the Claimant voluntarily left her position at McDonald's to pursue other employment opportunities.

Based on the foregoing, the NPFC has concluded that this submission contains several misrepresentations of fact as well as documentation that has been altered to support allegations contained in this claim.

Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

This claim is denied because the Claimant has materially misrepresented substantial elements of this claim in an attempt to falsely obtain funds from the Federal Government.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/16/12*

Supervisor's Action: *Denial Approved*

Supervisor's Comments:

¹⁶ PHONECON: NPFC Staff and Management of McDonald's, 407 Brent Lane, Pensacola, Florida, 16 March 2012.