

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
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2186

5890/DWHZ
6 April 2012

Ms. Tanisha Watson


Re: Claim Number: N10036-1717

Dear Ms. Watson:

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 N10036-1717 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

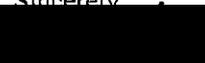
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1717.

Mail reconsideration requests to:

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

Sincerely,


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

Enclosure: Claim Summary/Determination Form

CC: Tanisha Watson
6504 Rainbow Ave.
Pensacola, FL 32505

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2193

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1717
Claimant	Tanisha Watson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$8,861.00.

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 14 March 2012, Arthur S. Barksdale, Esq., on behalf of Ms. Tanisha Watson, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$8,861.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as an outreach coordinator at Community Information Network (CIN), a non-profit agency offering STD testing in Pensacola, FL.² The Claimant alleged that the oil spill caused a reduction in tourism in Pensacola, which reduced the need for HIV testing and prevention services in the area. A letter contained in the Claimant's submission states the following,

[CIN] will not be funded due to the oil spill in the gulf. We have received word that there will not be a need for prevention work on the beach this summer, therefore the contract will no longer be funded.³

The Claimant alleged that after she lost her job with CIN, she was unemployed and received no income until March of 2011.⁴ The Claimant seeks lost profits and impairment of earning capacity damages totaling \$8,861.00.⁵

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, 14 March 2012.

² Letter from the Claimant regarding work at Community Information Network, 2 March 2012.

³ Letter from Marcel Davis, re: Community Promise program, 27 April 2010.

⁴ GCCF Full Review Final Payment Claim Form, at 2.

⁵ Letter from the Claimant's attorney to the NPFC, 14 March 2012.

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, noting sum certain, 14 March 2012;
- NPFC Authorization Agreement, signed on 2 March 2012;
- Letter from the Claimant regarding work at Community Information Network, 2 March 2012;
- GCCF Full Review Final Payment Claim Form, seeking lost wages of \$8,861.00;
- Fax Cover Sheet, 5 March 2012;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 22 February 2012;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 2 January 2012;
- GCCF Fax Cover Sheet, 6 October 2011;

- Hardship Letter, 6 October 2011;
- Copy of the Claimant's driver's license;
- Fax Cover Sheet, 7 October 2011;
- 2010 Form 1040, showing adjusted gross income of \$14,396.00;
- 2010 Schedule C-EZ (Form 1040), showing business profit of \$4,872.00;
- 2010 Schedule SE (Form 1040);
- 2010 Schedule EIC (Form 1040A or 1040);
- 2010 Form 8812;
- 2010 Form 8863;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Wages and Salaries Summary Attachment;
- 2010 Form 8863 Credit Limit Worksheet;
- 2010 Standard Deduction Worksheet;
- 2010 Child Tax Credit Worksheet;
- 2010 Worksheet B – Earned Income Credit;
- 2010 EIC Worksheet B – Line 4a;
- Form 8867 (Rev. 12-2009);
- Letter from Lisa Wiggins, re: employment verification, 10 November 2010;
- Letter from Marcel Davis, re: Community Promise program, 27 April 2010;
- Recommendation letter from Marcel Davis, 10 November 2010;
- GCCF Client Authorization form, signed on 6 October 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 \$8,861.00.⁶ The Claimant was assigned Claimant ID # 3142903 and the FRF claim was assigned claim # 9540598.⁷ This claim was denied by the RP/GCCF in a letter dated 22 February 2012.⁸

On 14 March 2012, the Claimant submitted this claim to the NPFC, seeking \$8,861.00 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 denied payment on this claim prior to its presentment to the NPFC, the NPFC may fully adjudicate this claim in the amount of \$8,861.00.¹¹

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 order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must prove (1) that the Claimant sustained a financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

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 Deficiency Letter on Interim Payment/Final Payment Claim, 22 February 2012.

⁹ Letter from the Claimant's attorney to the NPFC, 14 March 2012.

¹⁰ 33 C.F.R. § 136.103(a).

¹¹ 33 C.F.R. § 136.103(a).

The Claimant alleged that funding for a non-profit agency that offered HIV testing and prevention services (CIN), for which the Claimant was a full-time outreach coordinator, was discontinued as a result of the Deepwater Horizon oil spill.¹² The Claimant stated that because tourism on Pensacola beaches was expected to be affected by the oil spill, there was no need for CIN to continue to offer its services.¹³ According to the Claimant, her position was therefore terminated and she remained unemployed until March of 2011.¹⁴ In support of these assertions, the Claimant included letters from her employer, confirming that grant funding had been discontinued “due to the oil spill in the gulf.”¹⁵

The letter from the Claimant’s employer noting the discontinuation of grant funding is dated 27 April 2010, which is three days after the discovery that oil was leaking into the Gulf, almost two weeks before it was announced that oil may affect the Gulf shore, and nearly three weeks before any oil was reported on a Gulf beach.¹⁶ In a phone conversation with NPFC staff, the Claimant confirmed that the letter included in her submission is the same letter that informed her of the discontinuation of CIN’s grant funding.¹⁷

The NPFC contacted the Executive Director of CIN in order to verify information contained in letters signed by him and presented by the Claimant. The Director stated that CIN is no longer operational.¹⁸ He stated that it stopped operating during the summer of 2010, because grant funding had been depleted, and grants were not renewed.¹⁹ Furthermore, the Director confirmed that non-renewal of grants, which lead to the shut-down of the agency, was not caused by the oil spill or its effects.²⁰

The NPFC also contacted the Florida Department of Health to confirm that the grants affecting the Claimant were discontinued following the Deepwater Horizon oil spill. A representative of the Florida Health Department confirmed that the allegedly discontinued program, Community PROMISE, had not been implemented by CIN since 2006.²¹ Furthermore, the representative stated that the oil spill would not have affected the group’s funding, as CIN’s purpose was to provide services to residents of Escambia County, and not to tourists.²²

Based on the foregoing, it appears that this claim submission contains substantial misrepresentations of fact. 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.

¹² Hardship letter, 6 October 2011.

¹³ Letter from Lisa Wiggins, re: employment verification, 10 November 2010.

¹⁴ GCCF Full Review Final Payment Claim Form, at 2.

¹⁵ Letter from Marcel Davis to the Claimant, 27 April 2010.

¹⁶ See e.g., *BP Oil Spill Timeline*, guardian.co.uk, 22 July 2010. Accessed on 16 March 2012.

¹⁷ PHONECON: NPFC Staff and the Claimant, 19 March 2012.

¹⁸ PHONECON: NPFC Staff and Executive Director, CIN, 16 March 2012.

¹⁹ PHONECON: NPFC Staff and Executive Director, CIN, 16 March 2012.

²⁰ PHONECON: NPFC Staff and Executive Director, CIN, 16 March 2012.

²¹ PHONECON: NPFC Staff and Florida Health Department, 27 March 2012.

²² PHONECON: NPFC Staff and Florida Health Department, 27 March 2012.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$8,861.00, 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, and (3) the Claimant has misrepresented substantial elements of this claim in an attempt to secure funds from the federal government.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/6/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: