

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 9587

5890/DWHZ
27 April 2012

Tanyatta Jarrett


Re: Claim Number: N10036-1724

Dear Ms. Jarrett:

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 your claim number N10036-1724 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. If, however 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 N10036-1724.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1724
Claimant	Tanyatta Jarrett
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On March 21, 2012, Tanyatta Jarrett (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC), seeking \$8,000.00 in loss of profits and impairment earning capacity.

The Claimant has a health care business, Jarrett Home Health, where she provides home health care for elderly or disabled people in Mobile, Alabama.¹ At the time of the Deepwater Horizon oil spill, the Claimant was employed by Alesia and Derrick Johnson, providing medical services to Mr. Johnson's mother.² The Claimant asserted that Mr. Johnson lost his job as a manager of a seafood market in Mobile, AL due to the Deepwater Horizon oil spill.³ Because of the loss of his job, Mr. Johnson was no longer able to afford the Claimant's services and she was out of work from the middle of June 2010 to 22 December 2010, resulting in a significant loss of earnings for the Claimant.⁴

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication

¹ Letter of claim explanation from Claimant to the GCCF, dated April 11, 2011.

² Letter of claim explanation from Claimant to the GCCF, dated April 11, 2011.

³ Letter from Claimant to the GCCF, dated April 11, 2011.

⁴ Letter of claim explanation from the Claimant to the GCCF(2), undated.

regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 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

The Claimant's Submission to the OSLTF

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, received by the NPFC on 21 March 2012;
- Page 1 of GCCF Claim Form Generated Online;
- Letter of claim explanation from the Claimant to the GCCF, dated 11 April 2011;
- Letter of claim explanation from the Claimant to the GCCF(2), undated;

- Letter from former client (Derrick Johnson), undated;
- Copy of Alabama Driver's License;
- Deficiency Letter on Interim Payment/Final Payment Claim, dated 27 April 2011;
- Denial letter from the GCCF for an Emergency Advance Payment, dated 07 December 2010;
- Denial letter on Interim Payment/Final Payment, dated 07 May 2011;
- Denial letter for Interim Payment/Final Payment, dated 09 September 2011;
- Federal Tax Return Transcripts for 2008 and 2009;
- 2010 Form 1040 U.S. Individual Income Tax Return;
- GCCF Full Review Final Payment Claim Form, dated 14 March 2011;
- Letter from the GCCF, dated 12 April 2011; and
- 2009 and 2010 Monthly Income Spreadsheets.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 21 November 2010 in the amount of \$6,000.00.⁵ She was assigned Claimant ID # 3429823 and Claim # 510382. The EAP claim was denied by the GCCF on 07 December 2010.⁶ Additionally, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 12 April 2011 for lost wages and earnings in the amount of \$8,000.00.⁷ She was assigned claim # 9345014; this claim was denied by the GCCF on 07 May 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of her claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced reduced earnings as a home health care professional. The NPFC deems that the Claimant's GCCF claims were both properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1724 considers and addresses the earnings claimed to the responsible party; specifically, GCCF Claim # 510382 (EAP) and claim # 9345014 (FRF).

NPFC Determination

The claim is denied. 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 documentation presented by the Claimant.

This claim is denied because the Claimant failed to prove that she suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that she lost earnings because her client, Derrick Johnson, lost his job as the manager of a seafood market due to the Deepwater Horizon oil spill and could no longer afford her healthcare services.⁹ In a letter submitted by the Claimant, Mr. Johnson stated that Food for Less, located in Mobile, Alabama, was the store from where he was laid off due to the Deepwater Horizon oil spill.¹⁰ The NPFC contacted Food for

⁵ Report from GCCF dated 17 April 2012.

⁶ Denial letter from the GCCF for Emergency Advance Payment, dated 07 December 2010.

⁷ Report from GCCF dated 17 April 2012.

⁸ Denial letter on Interim Payment/Final Payment, dated 07 May 2011.

⁹ Letter of claim explanation from the Claimant to the GCCF(2), undated.

¹⁰ Letter from former client (Derrick Johnson), undated.

Less on 23 April 2012 to verify the Claimant's assertions and to obtain information linking the Claimant's alleged loss to the Deepwater Horizon oil spill. The NPFC was informed by Food for Less that, while Mr. Johnson was out of work at Food for Less from 27 September 2010 through 06 December 2010, he did not lose any earnings, nor was he laid off due to the Deepwater Horizon oil spill.¹¹ Consequently, the Claimant failed to prove that her alleged loss was a result of the Deepwater Horizon.

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

Date of Supervisor's Review: *4/27/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹¹ FAX from Food for Less to the NPFC on 24 April 2012.