

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)
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7010 1060 0001 7082 9260

5890/DWHZ
14 May 2012

Arthur S. Barksdale IV, Esq.


Re: Claim Number: N10036-1739

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 your claim number N10036-1739 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 N10036-1739.

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

Copy: Splinnetta Williams


USPS Certified Receipt: 7010 1060 0001 7082 9277

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1739
Claimant	Splinetta Williams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$20,735.80

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 29 March 2012, Arthur S. Barksdale IV, Esq., on behalf of Splinetta Williams (the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$20,735.80 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed as a nurse at Baptist/Gulf Breeze Hospital, located in Pensacola, Florida.¹ The Claimant asserted that, due to the Deepwater Horizon oil spill, her work hours were cut immediately and the hospital was closed in August of 2010.² Alternately, the Claimant asserted that she also worked for The Portofino, which shut down due to the Deepwater Horizon oil spill as well.³

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 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).

¹ GCCF Full Review Final Payment Claim Form, 02 September 2011.

² GCCF Full Review Final Payment Claim Form, 02 September 2011.

³ Letter from the Claimant to "whom it may concern," undated.

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 the claim, the Claimant presented the following documentation to the NPFC:

- Letter from Arthur S. Barksdale IV, Esq. to the NPFC, dated 27 March 2012;
- NPFC Authorization Agreement, signed by the Claimant on 19 March 2012;
- Denial Letter on Interim Payment/Final Payment Claim, dated 01 March 2012;
- GCCF Full Review Final Payment Claim Form, 02 September 2011;
- Copy of State of Florida Driver's License;
- Letter of claim explanation from the Claimant, dated 06 September 2011;
- Letter from the Claimant to "whom it may concern," undated;
- 2008 Form 1040A U.S. Individual Income Tax Return;
- 2009 Form 1040A U.S. Individual Income Tax Return;

- 2010 Form 1040A U.S. Individual Income Tax Return;
- 2011 Form 1040A U.S. Individual Income Tax Return; and
- GCCF Client Authorization Form, signed by the Claimant on 02 September 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings in the amount of \$3,000.00 on 16 November 2010.⁴ The Claimant was assigned Claimant ID # 3402440 and Claim # 475727. The Claimant also filed a Full Review Final Claim (FRF) claim with the GCCF for loss of earnings in the amount of \$20,735.80 on 14 December 2011; he was assigned Claim # 9548278.⁵ Both of these claims were denied by the GCCF.⁶

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 lost her job as a nurse at Gulf Breeze Hospital. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1739 considers and addresses the earnings claimed in the claims presented to the responsible, specifically; GCCF Claim #'s 475727 (EAP) and 9551324 (FRF).

NPFC Determination

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.

In the submission to the NPFC, the Claimant asserted that she was a nurse at Baptist/Gulf Breeze Hospital and that the hospital closed in August of 2010 due to the Deepwater Horizon oil spill.⁷ On 30 April 2012, the NPFC contacted Baptist/Gulf Breeze Hospital to confirm the Claimant's assertions. The NPFC was informed by the hospital that the Claimant's employment there did end on 26 August 2010.⁸ However, the NPFC was informed that the Claimant had been employed at the hospital as a financial counselor, not a nurse.⁹ As well, the NPFC was informed that the hospital was not affected by the Deepwater Horizon oil spill and did not close down, nor was the termination of the Claimant's employment connected in any way to the Deepwater Horizon oil spill.¹⁰

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 or omits a material fact may be subject to a civil penalty for each claim.

⁴ Report from the Transition Program, dated 01 May 2012.

⁵ Report from the Transition Program, dated 01 May 2012.

⁶ Report from the Transition Program, dated 01 May 2012.

⁷ GCCF Full Review Final Payment Claim Form, 02 September 2011.

⁸ PHONECON between the NPFC and Baptist/Gulf Breeze Hospital on 30 April 2012.

⁹ PHONECON between the NPFC and Baptist/Gulf Breeze Hospital on 30 April 2012.

¹⁰ PHONECON between the NPFC and Baptist/Gulf Breeze Hospital on 30 April 2012.

The Claimant's request for \$20,735.80 is hereby denied because the evidence presented by the Claimant regarding the detailed information provided by the employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order to obtain funds from the Federal Government under false pretenses and the Claimant failed to demonstrate that she experienced a loss in the amount alleged and as such, this claim is denied.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *5/14/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: