

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
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4579

5890/DWHZ
2 May 2012

Mr. Daniel Hammond



Re: Claim Number: N10036-1756

Dear Mr. Hammond:

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 N10036-1756 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 N10036-1756.

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
Claimant's Submission to the OSLTF

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | N10036-1756 |
| Claimant | Daniel Hammond |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earning Capacity |
| Amount Requested | \$73,821.55 |

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 11 April 2012, Ms. Phyllis Hammond, on behalf of Daniel Hammond, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$73,821.55 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant is a commercial diver, who claimed to have been let go from his position with Neptune Underwater Services, as a result of a lack of work allegedly caused by effects of the Deepwater Horizon oil spill.² Specifically, the Claimant seeks to recover income lost from January 2011 through November 2011.³ Also included in the Claimant's alleged losses are costs associated with the Claimant's relocation and job search.

The Claimant alleged to have sustained actual losses of \$27,920.48 from January through November 2011, which the Claimant doubles to account for future losses, reaching a total alleged income loss of \$55,840.96.⁴ Additionally, the Claimant seeks \$17,980.59 in reimbursement for costs associated with searching for new employment for a total loss or profits damage claim of \$73,821.55.⁵

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.

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.

¹ Optional OSLTF Claim Form, signed on 20 February 2012.

² Letter from the Claimant to the GCCF, 14 December 2011.

³ Loss calculation sheet, 14 December 2011.

⁴ Loss calculation sheet, 14 December 2011.

⁵ Optional OSLTF Claim Form, signed on 20 February 2012.

- (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:
See Enclosure (2).

Prior to presentment of this claim to the NPFC, the Claimant presented a six-month Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages of \$37,846.95.⁶ The Claimant was assigned Claimant ID 3039635 and the EAP claim was assigned claim # 92897.⁷ The GCCF issued payment on this claim in the amount of \$37,900.00 on 29 September 2010.⁸

The Claimant then submitted a Second Quarter Interim Claim (ICQ22011), a Third Quarter Interim Claim (ICQ32011) and two Fourth Quarter Interim Claims (ICQ42011a & ICQ42011b) to the RP/GCCF, seeking various amounts of loss of profits damages. The Claimant retained Claimant ID 3039635 and the Interim claims were respectively assigned the following claim #'s: 9380922, 9489223, 9505066 and 9545918.⁹ The RP/GCCF issued payments on Interim Claims totaling \$35,990.72.¹⁰ Furthermore, documentation included in the Claimant's submission to the NPFC indicates that the Claimant was compensated \$10,400.00 by the Gulf Coast Restoration and Protection Foundation.¹¹

The Claimant has also submitted two Full Review Final (FRFa & FRFb) claims to the RP/GCCF, seeking loss of wages and impairment of earning capacity damages. The FRF claims were respectively assigned claim #'s 9256188 and 9261562.¹² The Claimant was sent a final payment offer from the GCCF, which the Claimant did not accept.¹³ Information available to the NPFC indicates that total compensation paid

⁶ Notice of Determination, Emergency Advance Payment, 29 September 2010.

⁷ GCCF Claimant status, accessed on 30 April 2012.

⁸ Notice of Determination, Emergency Advance Payment, 29 September 2010;

⁹ GCCF Claimant Status, accessed on 30 April 2012.

¹⁰ GCCF Determination Letter on Interim Payment/Final Payment claim, 8 June 2011.

¹¹ 2011 Form 1099-MISC

¹² GCCF Claimant Status, accessed on 30 April 2012.

¹³ Letter from the Claimant to the GCCF, denying final payment offer, 14 December 2011.

to the Claimant by both the GCCF and the Gulf Coast Restoration and Protection Foundation (GCRPF) totals at least \$84,290.72.

On 11 April 2012, the Claimant submitted this claim to the NPFC, seeking \$73,821.55 in loss of profits and impairment of earning capacity damages.¹⁴ The NPFC may adjudicate this claim to the extent that these damages were first presented to and denied by the RP/GCCF.¹⁵ Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentation.

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 damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an uncompensated financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

1. Payments made by the GCCF and GCRPF have fully compensated the Claimant.

OPA allows that a Claimant submit a claim for certain “*uncompensated* damages resulting from the discharge, or substantial threat of discharge of oil [emphasis added].”¹⁶ As previously noted, payments made to the Claimant by both the GCCF and the Gulf Coast Restoration and Protection Foundation (GCRPF), total at least \$84,290.72.¹⁷ Therefore, the Claimant must provide documentation sufficient to prove that payments previously made to the Claimant have not fully compensated the Claimant for any losses or reductions in the Claimant’s income, resulting from the Deepwater Horizon oil spill.¹⁸

In 2009, which was the Claimant’s highest earning year prior to the oil spill, the Claimant reported earnings of \$50,069.00.¹⁹ In 2010 and 2011, the period for which the Claimant is alleging to have sustained income losses as a result of the oil spill, the Claimant reported earnings of \$39,746.00²⁰ and 46,391.00.²¹

However, payments made to the Claimant by both the GCCF and the GCRPF bring the Claimant’s two year earning total (for 2010 and 2011) to at least \$170,427.72, for an average per year income of \$84,292.72. This is an approximate 68.35% increase over the Claimant’s 2009 income. Because compensation paid to the Claimant far exceeds the Claimant’s earnings prior to the Deepwater Horizon oil spill, payments made by the GCCF and GCRPF have fully compensated for any “actual net reduction or loss of earnings or profits suffered”²² by the Claimant for the claimed loss period, January to November 2011.

2. Material Misrepresentation.

The Claimant has materially misrepresented substantial elements of this claim. Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part,

¹⁴ Loss calculation sheet, 14 December 2011.

¹⁵ 33 C.F.R. § 136.103(a).

¹⁶ 33 C.F.R. § 136.1(a)(1).

¹⁷ The Claimant received an EAP payment of \$37,900.00; an Interim Payment of \$35,990.00, and a payment from the Gulf Coast Restoration and Protection Foundation of \$10,400.00.

¹⁸ 33 C.F.R. § 136.233(b).

¹⁹ 2009 Form 1040.

²⁰ 2010 Form 1040).

²¹ 2011 Schedule C (Form 1040).

²² 33 C.F.R. § 136.235.

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.

A letter provided by the Claimant and signed by a representative of the Claimant's former employer stated that the Claimant "was terminated on June 24, 2011."²³ The letter further states that "[d]ue to the Deepwater Horizon explosion April 2010 our company has experienced a major reduction of work for our commercial divers."²⁴ In the course of review of this claim, the NPFC contacted the Claimant's former employer to verify that the Claimant was indeed terminated due to lack of work following the Deepwater Horizon oil spill. A representative of the company stated that the section of the letter related to the Deepwater Horizon oil spill was not written by the company, and further stated that the Claimant was not terminated, but that he "abandoned" his job with the company.²⁵ Accordingly, the Claimant has failed to show that his alleged loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill as opposed to other factors, such as job abandonment.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained an uncompensated loss in the amount of \$73,821.55, (2) that his alleged loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill and (3) 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 

Date of Supervisor's Review: 5/2/12

Supervisor's Action: *Denial approved*

Supervisor's Comments:

²³ Letter from Neptune Underwater Services, 13 October 2011.

²⁴ Letter from Neptune Underwater Services, 13 October 2011.

²⁵ PHONECON: NPFC Staff and US Underwater Services, 30 April 12, EM; See also, internal emails, US Underwater Services, dated 24 July 2011.

Enclosure (2)
Evidence Presented in Support of
NPFC Claim # N10036-1756

- Optional OSLTF Claim Form, signed on 9 April 2012;
- Letter from the Claimant describing losses, 9 April 2012;
- Claimant's diving resume;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 8 June 2011;
- GCCF Election Form for Determination Letter on Lost Earnings and Income Claim, 8 June 2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 22 September 2011;
- GCCF Final Payment Election Form, 22 September 2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 10 October 2011;
- GCCF Final Payment Election Form, 8 January 2012;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 7 December 2011;
- GCCF Reevaluated Final Payment Election Form, 7 December 2011;
- GCCF Deficiency Letter On Interim Payment/Final Payment Claim, 7 February 2012;
- Power of Attorney Agreement;
- Letter from the Claimant to the GCCF, denying final payment offer, 14 December 2011;
- Letter from the Claimant to the GCCF regarding losses allegedly sustained from 1 January 2011 to 30 November 2011, 14 December 2011;
- Leave Application Form for period 5/16/11 to 5/27/11;
- Letter from the Claimant's employer concerning end of employment with Neptune Underwater Services, 13 October 2011;
- Pay Stub, 5/15/2011 to 5/28/2011;
- Neptune Underwater Services News;
- Letter from the Claimant to the GCCF, regarding earnings from 1 July 2011 to 30 November 2011, 14 December 2011;
- Account statement, showing direct deposit payment of \$5,748.00;
- Account statement, showing direct deposit payment of \$876.00;
- Account statement, showing direct deposit payment of \$4,180.00;
- Subsea payment records;
- Chart showing projected vs. actual earnings, January to November 2011;
- Document showing job-search expenses, 14 December 2011;
- Letter from the Claimant to the GCCF re: lack of Texas state tax return, 13 January 2012;
- 2010 Form W-2 wage and tax statement, showing wages of \$39,745.82;
- 2010 Form 1040;
- 2010 Schedule A (Form 1040);
- 2010 Schedule C (Form 1040);
- 2010 Form 4562;
- 2010 Form 2106-EZ;
- 2010 Schedule M (Form 1040A or 1040);
- Certification of Electronic Filing;
- Receipt, Closed Bell Diver Certificate, 21 January 2011;
- Description of wetsuit;
- Copy of Check, Naws, Inc. 26 March 2011, \$250.00;

- Letter from the Claimant to Todd Chappel, 16 March 2011;
- Best Buy receipt;
- Residency permit, Panama, expires 17 January 2012;
- Various travel and related receipts;
- Letter from Neptune Underwater Services regarding change of project date;
- Offer of employment, Neptune Underwater Services, signed on 31 July 2011;
- Certificate of Diver Medic Qualification, valid through 4 November 20114;
- IMCA Recognized Diver Medic Course Application;
- 2008 Form W-2 wages and tax statement;
- 2008 Form 1040;
- 2008 Schedule C-EZ (Form 1040);
- 2008 Form 8863;
- 2008 Form D-400 (50);
- 2009 Form W-2 wage and tax statements;
- 2009 Form 1040;
- 2009 Schedule A (Form 1040);2009 Form 8863;
- 2009 Form 3903;
- 2009 Form 4562;
- 2009 Form 2106-EZ;
- 2009 Schedule M (Form 1040A or 1040);
- 2011 Form W-2 wage and tax statement;
- 2011 Form 1099-MISC;
- 2011 Form 1040;
- 2011 Schedule A (Form 1040);
- 2011 Schedule C (Form 1040);
- Form 8862 (Rev. 12-2009);
- 2011 Form 2106;
- 2011 Form 4562;
- Certificate of Electronic Filing;
- North Carolina Individual Income Tax Return 2011;