

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7353

5890/DWHZ
06 June 2012

Teddy Hafer


Re: Claim Number: N10036-1769

Dear Mr. Hafer:

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 N10036-1769 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 N10036-1769.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1769
Claimant	Teddy Hafer
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$60,000

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 18 April 2012, Teddy Hafer (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$60,000 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 head of sales for Jerry's Marine Life, Inc. in Tampa, Florida.² The Claimant alleged to have sustained a loss of income due to a decrease in sales due to the Deepwater Horizon oil spill. The Claimant further alleged that it became difficult to secure products from Gulf divers.³

It is unclear from the documents submitted by the Claimant how he reached a sum certain of \$60,000.

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 3 April 2012.

² Hardship Letter from the Claimant, signed 4 April 2012.

³ Letter from the Claimant to NPFC, signed 17 May 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:

- Optional OSLTF Claim Form, signed 3 April 2012;
- Hardship Letter from the Claimant, signed 4 April 2012;
- Copy of GCCF Interim Payment Claim, signed 24 January 2012;
- Letter from the Claimant to the GCCF, signed 25 January 2012;
- Letter of Support from Daniel Fenton, signed 23 September 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 1 September 2011;
- Deficiency Letter on Interim Payment/Final Payment Claim, 6 August 2011;
- 2008 W-2 & Earnings Summary;
- 2008 W-2s from two employee leasing companies;
- 2008 1099 from Employer for Commissions Received;
- 2009 W-2s from employer and employee leasing company;
- 2010 W-2 from employer;
- Payroll Details for Claimant from April 2010 to July 2011;
- Support Letter from Aquaria Aquarium (two copies), signed 7 September 2011;
- Support Letter from Open Oceans (two copies), signed 18 January 2012;
- Support Letter from Matts Coral Connection (two copies), signed 18 January 2012;
- Support Letter from Aquascapes Aquariums (two copies), signed 18 January 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim (two copies), 22 December 2011;

- Support Letter from Employer, signed 23 August 2011;
- Letter from the Claimant to NPFC, signed 17 May 2012;
- Copy of AI Letter Mailed by NPFC, dated 3 May 2012;
- 2009 Individual Income Tax Return;
- 2010 Individual Income Tax Return;
- 2011 Individual Income Tax Return;
- Payroll Details for Claimant from January to September 2009;
- Payroll Details for Claimant from September 2009 to April 2010;
- Payroll Details for Claimant from May 2010 to May 2012.

On 27 July 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$60,000.⁴ The Claimant was assigned Claimant ID 3533060 and the FRF claim was assigned claim # 9427494.⁵ The RP/GCCF denied payment on this claim.

On 7 November 2011, the Claimant presented an Interim Payment (IP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$60,000.⁶ The Claimant retained Claimant ID 3533060 and the IP claim was assigned claim # 9532731.⁷ The RP/GCCF denied payment on this claim.

On 3 February 2012, the Claimant presented a second IP claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$60,000.⁸ The Claimant retained Claimant ID 3533060 and the IP claim was assigned claim # 9596035.⁹ The RP/GCCF denied payment on this claim.

On 18 April 2012, the Claimant submitted this claim to the NPFC, seeking \$60,000 in loss of profits and impairment of earning capacity damages.¹⁰ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹¹ Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$60,000.

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 actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

⁴ GCCF United States Coast Guard Report, 13 May 2012.

⁵ GCCF United States Coast Guard Report, 13 May 2012.

⁶ GCCF United States Coast Guard Report, 13 May 2012.

⁷ GCCF United States Coast Guard Report, 13 May 2012.

⁸ GCCF United States Coast Guard Report, 13 May 2012.

⁹ GCCF United States Coast Guard Report, 13 May 2012.

¹⁰ Optional OSLTF Claim Form, signed 3 April 2012.

¹¹ 33 C.F.R. § 136.103(a).

The Claimant has not provided evidence sufficient to demonstrate that any lost income resulted from the discharge of oil caused by the Deepwater Horizon oil spill. The Claimant has also failed to demonstrate that Jerry's Marine Life, Inc suffered lost business as a result of the oil spill.

In a letter dated 3 May 2012, the NPFC requested that the Claimant provide certain additional documentation to meet the requirements of the law listed above, including (1) financial records from his place of employment demonstrating lost revenue in the period following the oil spill, (2) the names and contact information of Gulf divers the Claimant works with, and (3) contracts and/or receipts of sales cancelled due to the spill.

On 17 May 2012, the Claimant responded to the NPFC request for additional information. The Claimant reasserted that the oil spill had caused a decrease in business, but was unable to provide any financial documentation from his place of employment.¹² Without any sort of financial data, the NPFC is unable to verify the alleged losses. These responses are insufficient to establish that any alleged losses were the result of the Deepwater Horizon oil spill.

The Claimant also provided income tax returns and payroll information. However, the Claimant's 2009 and 2010 tax returns do not demonstrate a loss of income. The Claimant had earnings of \$16,289 in 2009 as compared to \$16,969 in 2010, an increase of \$680. Furthermore, after comparing the 2010 payroll information for the period of time after the oil spill to the same period in 2009¹³, the NPFC did not see a significant difference in earnings.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$60,000, 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: *6/6/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² Letter from the Claimant to NPFC, signed 17 May 2012.

¹³ Payroll Details for Claimant from April 2010 to July 2011; Payroll Details for Claimant from January to September 2009; Payroll Details for Claimant from September 2009 to April 2010.