

U.S. Department of
Homeland Security

**United States
Coast Guard**

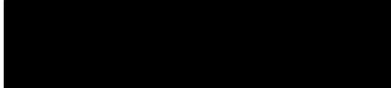


Director
United States Coast Guard
National Pollution Funds Center

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: 7011 1570 0001 2446 1196

5890/DWHZ
15 June 2012

Mary Toms


RE: Claim Number: N10036-1780

Dear Ms. Toms:

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 claim number N10036-1780 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. 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 N10036-1780.

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 | N10036-1780 |
| Claimant | Mary Toms |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$35,514.62 |

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 26 April 2012, Mary Toms (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$35,514.62 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant worked for HCA Shared Services Orange Park¹ as an emergency room registration specialist.² The Claimant is also a real estate agent in Panama City Florida.³ The Claimant alleges she lost her job with HCA and a real estate sale for which she would have received commission had it not been for the Deepwater Horizon oil spill.⁴

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 Letter from HCA dated 03 November 2010.

² Optional OSLTF claim form dated 16 April 2012.

³ State of Florida Real Estate Sales Associate license.

⁴ Optional OSLTF claim form dated 16 April 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 her claim, the Claimant submitted:

- Optional OSLTF claim form dated 16 April 2012
- Emails with real estate principal dated 14 -15 June 2010.
- Copy of FL drivers license
- Copy of FL real estate license
- Letter of explanation dated 06 March 2012
- 2011 Form 1040A U.S. Individual Income Tax Return
- IRS record of account for tax period 31 December 2010
- Letter from HCA dated 03 November 2010
- Deposit voucher from HSS Systems LLC dated 25 June 2010

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$35,514.62.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 15 October 2010 in the amount of \$20,000.00.⁵ She was assigned Claimant ID # 3186430 and claim # 241896 and was denied.⁶ Additionally, the Claimant filed a

⁵ Report from the GCCF dated 21 May 2012.

⁶ Report from the GCCF dated 21 May 2012.

Final Claim (FC) with GCCF and was issued claim # 9058193 on 05 November 2011 for \$136,000.00 and was denied.⁷ Finally, the Claimant filed a Full Review Final claim (FRF) with GCCF claim #9579097 on 07 March 2012 for \$25,000.00. This claim was also denied.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1780 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 241896 (EAP), 9058193 (FC), and 9579097 (FRF).

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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earning capacity 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.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim.⁹ The letter requested, among other things, a letter of explanation from her employer citing the cause of termination and questions regarding her work with HCA and PRN status failure.¹⁰ The NPFC's letter was sent on 09 May 2012. On 14 May 2012, the Claimant signed for the certified letter.¹¹ To date, no response has been received by the NPFC. The NPFC accordingly proceeded to evaluate the claim with the evidence the Claimant had originally submitted.

Lost profits from real estate commission

The Claimant alleges lost commission in the amount of \$19,500.00 on the loss of a real estate sale.¹² The Claimant submitted emails between her and her client showing that a higher offer of \$325,000.00 was submitted and her client offered \$275,000.00.¹³ Based upon the evidence provided, it appears that the Claimant's client did not execute a contract for purchase for reasons other than the Deepwater Horizon oil spill, such as being outbid by another purchaser.¹⁴ As such, the Claimant has failed to demonstrate she experienced the loss of a real estate deal due to the Deepwater Horizon oil spill.

⁷ Report from the GCCF dated 21 May 2012.

⁸ Report from the GCCF dated 21 May 2012.

⁹ USPS tracking # 7011 1570 0001 2446 3411.

¹⁰ NPFC request for additional information at questions 1 and 8-10.

¹¹ USPS tracking # 7011 1570 0001 2446 3411.

¹² Optional OSLTF claim form at question 9.

¹³ Emails dated 14 June 2010 – 15 June 2010.

¹⁴ Emails dated 14 June 2010 – 15 June 2010.

Lost earnings due to being terminated from HCA

The Claimant alleges she lost her job at HCA as an emergency room registration specialist due to lack of visitors to the hospital.¹⁵ NPFC staff asked for documentation to evidence the allegation; however as of this date, the Claimant has not submitted evidence to support her assertion.¹⁶ The Claimant submitted a letter from HCA stating that “the reason for termination with HCA Shared Services Orange Park is due to non-utilized PRN status.”¹⁷

The NPFC staff contacted a Human Resource specialist with HCA Gulf Medical on 08 May 2012.¹⁸ The Human Resource specialist stated that PRN means “as needed” and termination is generally if the employee is not able to meet the requirements of the position. The Human Resource specialist refused to speak specifically about the Claimant and the 2010 patient volume.¹⁹ Based on the evidence presented, it is not evident that the Claimant lost her job with HCA as a result of the Deepwater Horizon oil spill vice other reasons associated with having an “on call” type of employment schedule. Should the Claimant decide to return on reconsideration, she will need to produce all previously requested information as well as a copy of her work schedule and written confirmation from her employer that she was not terminated for reasons associated with her PRN schedule.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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:  *Denial approved*

Date of Supervisor’s Review: *6/15/12*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

¹⁵ Optional OSLTF claim form dated 16 April 2012 at question 10.

¹⁶ NPFC’s request for additional information dated 09 May 2012 at questions 1 and 9.

¹⁷ Letter from HCA dated 03 November 2010.

¹⁸ NPFC call log with HCA Human Resource Specialist dated 08 May 2012.

¹⁹ NPFC call log with HCA Human Resource Specialist dated 08 May 2012.