

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
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 1219

5890/DWHZ
15 June 2012

Eric Johnson


RE: Claim Number: N10036-1785

Dear Eric Johnson:

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 N10036-1785 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 N10036-1785.

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	N10036-1785
Claimant	Eric Johnson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,000.00

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 02 May 2012, Eric Johnson (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$12,000.00 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 only submitted their optional OSLTF claim form and tax returns for 2008, 2009, and 2010.¹ The Claimant states that he "lost earnings: time and day cut,"² however he does not state who he works for, what his vocation is, nor how the Deepwater Horizon oil spill caused him a loss of earnings.

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 dated 01 May 2012 and tax returns for 2008, 2009, and 2010.

² Optional OSLTF claim form dated 01 May 2012 at question 2 and 10.

- (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 his claim, the Claimant submitted:

- Optional OSLTF claim form dated 01 May 2012
- 2010 Form 1040A U.S. Individual Income Tax Return (first page)
- 2009 Form 1040A U.S. Individual Income Tax Return (first page)
- 2008 Form 1040A U.S. Individual Income Tax Return (first page)
- GCCF letter regarding the proposed settlement of BP Deepwater Horizon litigation

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$12,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 29 September 2010 in the amount of \$5,000.00.³ He was assigned Claimant ID #3050506 and claim #104642 and was denied.⁴ Additionally, the Claimant filed an Interim claim (ICQ32011) with GCCF #9437595 for \$5,000.00 on 15 August 2011 and was denied.⁵ The Claimant also filed a Full Review Final claim (FRF) with GCCF #9577856 on 10 March 2012 for \$8,000.00 which is under review.

³ Report from the GCCF dated 21 May 2012.

⁴ Report from the GCCF dated 21 May 2012.

⁵ Report from the GCCF dated 21 May 2012.

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 his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two 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 N10036-1785 considers and addresses the earnings claimed in both claims denied by the responsible party, specifically; GCCF Claim #'s 104642 (EAP) and 9437595 (ICQ32011).

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.

Here, 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.

This claim is denied because the Claimant's submission fails to meet the requirements of 33 C.F.R. § 136.231-235 to establish a claim for loss of profits or impairment of earnings capacity. For example, the Claimant has provided no information which would support that he suffered any decrease in hours as a result of the oil spill, or that the reduction in hours was due to the Deepwater Horizon oil spill. In fact, the Claimant has provided no evidence of current or past employment at all besides his 2008, 2009, and 2011 tax returns. The Claimant has not set forth the period over which he is claiming his damages, and has provided no information as to how he has calculated his sum certain.

The NPFC sent the Claimant a written request for additional information on 09 May 2012.⁶ On 14 May 2012, the Claimant signed and received the certified letter for deliver.⁷ To date, no response has been made to the NPFC regarding the requested documentation and questions.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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: *6/15/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ USPS tracking # 7011 1570 0001 2446 3435.

⁷ USPS tracking # 7011 1570 0001 2446 3435.