

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 9043

5890/DWHZ
11 June 2012

Mrs. Chelsea Murray


Re: Claim Number: N10036-1803

Dear Mrs. Murray:

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 N10036-1803 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

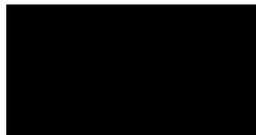
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1803.

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: (1) Claim Summary/Determination Form
(2) Claimant's submission to the OSLTF

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1803
Claimant	Mrs. Chelsea Murray
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$105,000.00.

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 10 May 2012, Mrs. Chelsea Murray (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$105,000.00 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

On 30 March 2009, the Claimant was hired through a contract staffing company to work as the Chief Operations Officer for Microspine Surgery Center (Microspine) in DeFuniak Springs, Florida.² Microspine provided endoscopic spinal surgery to a largely out-of-state patient base. Specifically, a letter signed by the owners of Microspine stated that, "80% of our clients come from greater than 300 miles" away.³ Therefore, according to the Claimant, "[Microspine is] dependant on tourism for [its] volume, not the local market."⁴

The Claimant stated that Microspine closed its business in February of 2011, and that she has been unemployed since that time.⁵ In addition, the Claimant alleged that prior to the loss of her position she did not receive an anticipated bonus in 2010 as a result of the Deepwater Horizon oil spill.⁶ The Claimant therefore seeks \$105,000.00 in earnings allegedly lost from 2010, until 1 May 2012.⁷

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.

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

² Hardship Letter, 2 May 2012.

³ Letter from Microspine representatives to the Claimant, 29 October 2010.

⁴ Letter from Microspine representatives to the Claimant, 29 October 2010.

⁵ Hardship Letter, 2 May 2012.

⁶ The Claimant alleged that she was not paid a bonus as a result of the oil spill. *See*, Summary of 2010, 2011, 2012 lost income.

⁷ Summary of 2010, 2011, 2012 lost income.

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.
- (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 documentation listed in Enclosure (2).

Prior to presentation of this claim to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking lost earnings or profits damages.⁸ The Claimant was assigned Claimant ID 3448126 and the EAP claim was assigned claim # 533928.⁹ The RP/GCCF denied payment on this claim in a letter dated 15 December 2010.¹⁰

The Claimant then submitted a Third Quarter Interim Claim (ICQ32011) to the RP/GCCF, again seeking lost earnings or profits damages. The ICQ32011 was assigned claim # 9417869, and the RP/GCCF issued payment on this claim in the amount of \$31,178.08.¹¹

The Claimant then submitted a Fourth Quarter Interim Claim (ICQ42011), as well as two claims for second quarter 2012 losses, identified by the GCCF as "Sixth Quarter Interim Claims" (ICQ62012a, & ICQ62012b). The claims were respectively assigned claim #'s 9517389 and 9594763, and the GCCF denied payment on each of these claims.¹²

⁸ GCCF Claimant Status, accessed on 15 May 2012.

⁹ GCCF Claimant Status, accessed on 15 May 2012.

¹⁰ GCCF Claimant Status, accessed on 15 May 2012.

¹¹ GCCF Determination Letter on Interim Payment/Final Payment Claim, 18 November 2011.

¹² GCCF Claimant Status, accessed on 15 May 2012.

The Claimant also submitted a Full Review Final (FRF) claim to the RP/GCCF, again seeking loss of earnings or profits damages. The FRF claim was assigned claim # 9389805, and was issued a Final Payment offer, which the Claimant did not accept.¹³

On 10 May 2012, the Claimant submitted this claim to the NPFC, seeking \$105,000.00 in loss of profits and impairment of earning capacity damages.¹⁴ OPA requires that all claimants first submit claims for costs and damages to the RP, prior to presentment of the claim to the NPFC.¹⁵ Should the RP deny payment on a claim, or fail to render a determination within 90 days of presentment, the Claimant may present the same claim to the NPFC.¹⁶ Because the RP/GCCF has denied payment on damages presented by the Claimant, the NPFC may adjudicate this claim to the extent that these damages were first presented to and denied by the RP/GCCF. Any damage amount which has not first been presented, or which has been previously compensated, is denied for improper presentment.¹⁷

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.

Here, 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, uncompensated 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 payments previously made to the Claimant by the GCCF have fully compensated the Claimant for any losses that the Claimant may have sustained as a result of the Deepwater Horizon oil spill.

1. 2010 losses: \$52,206.71

The Claimant has failed to provide documentation sufficient to prove that she sustained an actual financial loss in 2010.

The Claimant began working with Microspine on 30 March 2009.¹⁸ In 2009, the Claimant earned a salary of \$56,153.93, for an average monthly salary of \$6,239.33. The Claimant also received three bonus payments in 2009, totaling \$38,000.00.¹⁹

In 2010, the Claimant's base pay rate slightly increased to an average of \$6,662.27 per month, for a total of \$79,947.22 for the year.²⁰ However, the Claimant did not receive bonus payments in 2010.

The Claimant seeks to recover what she has classified as two distinct losses: (1) a \$14,206.71 loss based on a decrease in the Claimant's salary from 2009 to 2010, and (2) a \$38,000.00 loss based on the fact that the Claimant did not receive bonus payments in 2010.

¹³ GCCF Claimant Status, accessed on 15 May 2012.

¹⁴ Optional OSLTF Claim Form, signed on 2 May 2012.

¹⁵ 33 C.F.R. § 136.103(a).

¹⁶ 33 C.F.R. § 136.103(c)(2).

¹⁷ 33 C.F.R. § 136.103(a).

¹⁸ Letter from the Claimant's employer regarding the closure of the business, 4 February 2011.

¹⁹ Spreadsheet Summary of the Claimant's check stubs/income.

²⁰ Spreadsheet Summary of the Claimant's check stubs/income.

In calculating that she sustained a 2010 salary decrease of \$14,206.71, the Claimant adds her actual 2009 salary (\$56,153.93) to her 2009 bonus payments (\$38,000.00) to reach \$94,153.93 in total income for that year. The Claimant then makes a separate claim for \$38,000.00 in lost bonuses. The Claimant has therefore improperly factored the alleged loss of her 2010 anticipated bonus into both calculations.

As noted above, the Claimant's base salary actually increased in 2010 as compared to 2009. Accordingly, \$14,206.71 of this claim for lost salary is denied as the Claimant did not sustain a reduction in salary in 2010.²¹ Any loss of income sustained by the Claimant in 2010 would be entirely attributable to the fact that the Claimant did not receive bonus payments in that year.

The portion of this claim seeking \$38,000.00 in unpaid 2010 bonuses is also denied. Because bonuses are granted on a discretionary basis and are not guaranteed, this alleged loss is speculative. Speculative losses of discretionary income are not compensable under OPA, which provides compensation for "*actual* net reductions or loss of earnings or profits suffered" (emphasis added).²²

In order to determine whether or not employee bonus payments might have been guaranteed by company policy or through employment contracts, the NPFC requested that the Claimant provide evidence of the company's policy with regard to bonus payments, as well as a copy of the Claimant's employment contract.²³ The Claimant responded in an email on 31 May 2012, stating that she did not have an employment contract and that in terms of bonus payments,

[t]here was no set policy in place. Most bonuses were given on an incentive/profit based quarterly, which was decided and approved by the governing body board.²⁴

The Claimant's alleged \$38,000.00 loss is therefore speculative, and not compensable under OPA.

Accordingly, all alleged 2010 losses totaling \$52,206.71 are denied, as the Claimant has failed to prove that she sustained actual financial losses in 2010.

1. 2011 & 2012 losses: \$52,025.38

The Claimant alleged to have lost earnings of \$52,025.38 from the time of her lay-off in February 2011, until 1 May of 2012.

Prior to presentment of this claim to the NPFC, the Claimant had been compensated a total of \$31,178.00 by the GCCF for 2011 losses.²⁵ This payment has fully compensated the Claimant for any losses she may have incurred as a result of the Deepwater Horizon oil spill.

At the time that the Claimant was let go, she was earning, on average, \$6,662.27 per month. For the year 2011, the Claimant's earned income in addition to her unemployment income totaled \$24,526.05. In addition to the \$31,178.00 GCCF payment, the Claimant's total income for 2011 equaled \$55,704.05. Using the Claimant's average monthly pay rate for 2010 (\$6,662.27), the NPFC calculated that the Claimant has been compensated for at least 8.3 months of 2011- in other words, at least through mid-October of that year. This is approximately one year from the time that

²¹ The NPFC notes that a record of the Claimant's pay stubs shows that her bi-weekly pay actually increased from \$2,115.38 to \$3,269.24 as of 4/7/2010, and remained at that level until the business closed in February of 2011.

²² 33 C.F.R. § 136.235

²³ NPFC Request for additional information, 21 May 2012.

²⁴ Response to NPFC request for additional information, 31 May 2012.

²⁵ Spreadsheet Summary of the Claimant's check stubs/income.

the Claimant received notice that Microspine was beginning lay-offs as a result of the company's loss of business, and over six months following the Claimant's loss of her position.²⁶

The Claimant has not provided evidence to prove that her continued unemployment after October of 2011 is due to the discharge of oil resulting from the Deepwater Horizon oil spill. In a letter dated 21 May 2012, the NPFC requested that the Claimant provide "a list of companies with whom [the Claimant] has pursued employment" since her lay-off. The Claimant failed to provide such documentation, noting that the Florida Workforce Development Board does not require that she actually *apply* to jobs, and only requires that she provide proof that she has *searched* for jobs.²⁷ Based on the fact that the Claimant did not provide a response to this documentation request, it appears that the Claimant has not actually submitted any job applications since her lay-off in February of 2011. Furthermore, regarding her difficulty finding suitable employment, the Claimant specified that,

it is difficult to find the level of employment in this small area. The positions that have become available are more times than none, significantly below my salary requirements or outside of my driving area.²⁸

It appears that if the oil spill was the cause of the Claimant's initial loss of her position, it is not the cause of the Claimant's continued unemployment after October of 2011.

This claim is therefore denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained an actual loss in the amount of \$105,000.00 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: *6/11/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

²⁶ Letter from the Claimant's

²⁷ Response to NPFC request for additional information, 31 May 2012; Furthermore, the NPFC notes that as of August 1, 2011, the State of Florida in fact requires that all persons receiving unemployment compensation "make contact with five prospective employers." See, <http://www.floridajobs.org/frequently-asked-questions-directory/frequently-asked-questions/category/200e7f10-8a0e-4409-a9ff-84d011a3fae6/x>. Accessed on 5 June 2012.

²⁸ Response to NPFC Request for additional information, 31 May 2012.

Enclosure (2)
Evidence Presented in Support of
NPFC Claim # N10036-1803

- Optional OSLTF Claim Form, signed on 2 May 2012;
- Cover Sheet, Hardship Letter;
- Hardship Letter, 2 May 2012;
- Cover Letter, Termination Letter;
- Letter from Microspine to the Claimant, regarding termination, 29 October 2010;
- Letter from Microspine regarding the Claimant's employment, 4 February 2011;
- Memorandum from Britt Landrum to the Claimant, 4 February 2011;
- Letter from Landrum to the Claimant, 23 November 2010;
- Letter from Patrick Kennedy to Ms. Barber regarding out of state clients, 3 June 2011;
- Letter from Patrick Kennedy to Ms. Barber regarding drop in clients in 2010 and 2011, 3 June 2011;
- Letter from Janet Boysen, Fienberg Rozen, LLP regarding trending test/causation, 21 January 2012;
- Cover Sheet, Unemployment;
- Emergency Unemployment Compensation Monetary Determination Tier III, 10 April 2012;
- Cover Sheet, Gulf Coast Claims Facility Information;
- GCCF Determination Letter on Interim Payment, 19 April 2012;
- GCCF Re-Review Determination Letter on Interim payment/Final Payment Claim, 15 February 2012, offering final payment of \$5,000.00;
- GCCF 1012: Reevaluated Final Payment Election Form, showing expiration of Final Payment Offer on 16 March 2012;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 18 November 2011;
- GCCF Determination Letter on Interim Payment/Final Payment Claim, 8 August 2011;
- Cover Sheet, Check Stubs 2010 and 2011;
- Summary of 2010, 2011, 2012 lost income;
- Breakdown of 2009 pay;
- Breakdown of 2010 pay;
- Breakdown of 2011 pay;
- YTD earning totals, 2011;
- YTD earning totals, 2010;
- YTD earning totals, 2009;
- Copies of checks/pay stubs/check registers, 2009, 2010, 2011;
- Cover Sheet, Tax Returns 2011, W-2's;
- 2011 Form 48682011 Florida AWI Tax Form Reprint;
- 2011 Form W-2 Wage and Tax Statement;
- Cover Sheet, Tax Returns 2010, W-2's;
- Rev December 2010 Form 1040X;
- 2010 Form 1040;
- 2010 Schedule A (Form 1040);
- 2010 Schedule E (Form 1040);
- 2010 Schedule SE (Form 1040);
- 2010 Form 4562;

- 2010 Form 8582;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Form 1099-R;
- 2010 Form W-2 Wage and Tax Statements;
- Confirmation of filing, Freedom Tax Service Plus, 25 February 2011;
- Cover Sheet, Tax Returns 2009, W-2;
- 2009 Form 1040;
- 2009 Form 1040-V;
- 2009 Schedule A, Form 1040;
- 2009 Schedule C, Form 1040;
- 2009 Schedule C, Form 1040;
- 2009 Schedule M (Form 1040A or 1040);
- 2009 Schedule Se (Form 1040);
- 2009 W-2 Detail Report;
- 2009 1099-R Detail Report;
- 2009 Form W-2 Wage and Tax Statements;
- Cover Sheet, Tax Returns 2008, W-2's;
- 2008 Form 1040;
- 2008 Schedule A (Form 1040);
- 2008 Schedule C-EX (Form 1040);
- 2008 Schedule SE (Form 1040);
- 2008 Form 2106-EZ;
- TurboTax, 2008 Federal Tax Return Summary.
- Response to NPFC Request for additional information, received on 31 May 2012;
 - Letter responding to NPFC request;
 - Letter from Angel Barber in support of this claim, 31 May 2012;
 - Letter from Angel Barber to the GCCF, 1 July 2010;
 - Email from Feinberg Rosen regarding causation, 21 January 2012;
 - Email from Angel Barber to Ebony Herring, 30 August 2010;
 - Email from Ebony Herring to Angel Barber, 14 January 2011;
 - Letter from Angel Barber to Ebony Herring, 25 January 2011;
 - Letter from Patrick W. Kennedy to Angel Barber, 3 June 2011.