

U.S. Department of
Homeland Security

**United States
Coast Guard**

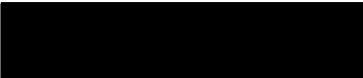


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL -- RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 9807

5890/DWHZ
5 July 2012

Ms. Christine L. Ferraiolo


Re: Claim Number: N10036-1805

Dear Ms. Ferraiolo:

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 N10036-1805 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 N10036-1805.

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	N10036-1805
Claimant	Ms. Christine L. Ferraiolo
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$25,000.00

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 14 May 2012, Ms. Christine Ferraiolo (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$25,000.00 in loss of profits and impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

From January 2009 until her resignation in January of 2011, the Claimant was employed as a "Guest Ambassador" at the Sanibel Harbour Marriot Resort and Spa in Fort Myers, Florida.² The Claimant stated that she was forced to resign in January of 2011, after her hours and shifts were reduced as a result of a decrease in tourism allegedly caused by the Deepwater Horizon oil spill.

A letter from the Claimant's former employer, included in this claim submission, states that,

due to the precipitous decline in business and revenue at the Sanibel Harbour Marriott Resort and Spa, [the Claimant's] hours and shifts were cut dramatically throughout the summer and fall of 2010, until she was forced to resign her position.³

The Claimant seeks damages in the amount of \$25,000.00 to compensate for \$16,900.00 in salary allegedly lost in 2011, as well as various expenses allegedly incurred as a result of the loss of her position⁴.

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 Section 2702(b) of OPA.

¹ Optional OSLTF Claim Form, signed on 17 April 2012.

² Memo, 23 March 2012.

³ Memo, 23 March 2012.

⁴ Optional OSLTF Claim Form, signed on 17 April 2012.

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.
- (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 on 17 April 2012;
- Memo from General Manager, Sanibel Harbour Resort & Spa, 23 March 2012;
- Letter from Cory L. Clark to the GCCF, 9 June 2011;
- Letter from the Claimant describing losses, undated;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 February 2012;
- H & R Block, 2011 Tax Return Summary with 2010 comparison;
- 2009 Form W-2 Wage and Tax Statement;
- 2009 Form 1040;
- 2010 Form W-2 Wage and Tax Statement;

- 2010 Form 1040A;
- 2011 Form W-2 Wage and Tax Statements;
- 2011 Form 1040;

Prior to presentment of this claim to the NPFC, the Claimant submitted several claims to the RP/GCCF under GCCF Claimant ID 1625592. The claims and their corresponding claim numbers are as follows:

- Third Quarter Interim Claim (ICQ32011), # 9429535;
- Fourth Quarter Interim Claim (ICQ42011), # 9517500;
- "Fifth Quarter" Interim Claim (ICQ52012), # 9565133;
- Full Review Final Claim (FRFa), # 9391879;
- Full Review Final Claim (FRFb), # 9589396.

The RP/GCCF denied payment on each of this claims, with the exception of FRFa, which remains under Re-Review as of the date of this determination.⁵

On 14 May 2012, the Claimant submitted this claim to the NPFC, seeking \$25,000.00 in loss of profits and impairment of earning capacity damages.⁶ OPA requires that all claims for costs or damages be first presented to the RP, prior to their presentment to the NPFC. Should the RP deny payment on a claim, or fail to render a determination within 90 days of presentment, the NPFC may properly adjudicate the claim.⁷ Information included in this claim submission indicates that the Claimant has presented this claim to the RP/GCCF, prior to presentment to the NPFC.⁸ However, if any amount of the \$25,000.00 now presented to the NPFC, was not first presented to the RP/GCCF, these damages are initially denied for improper presentment.

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.

The Claimant's initial submission to the NPFC contained insufficient documentation to prove that the Claimant's hours were indeed reduced after, and as a result of the oil spill, thereby prompting the Claimant's resignation. The NPFC therefore requested that the Claimant provide certain additional information in support of this claim. Among other items, the NPFC requested copies of the Claimant's pay stubs demonstrating the alleged reduction in hours, as well as proof that certain events at the hotel were actually cancelled as a result of the Deepwater Horizon oil spill.⁹ The Claimant was requested to respond within 14 days of the 21 May 2012 additional

⁵ GCCF Claimant Status, accessed on 17 May 2012

⁶ Optional OSLTF Claim Form, signed on 17 April 2012.

⁷ 33 C.F.R. § 136.103(e)(2).

⁸ Optional OSLTF Claim Form, signed on 17 April 2012.

⁹ NPFC request for additional information, 21 May 2012.

information request letter. However, as of the date of this determination, the Claimant has failed to respond.¹⁰

The remainder of this analysis is therefore based only on documentation provided by the Claimant in her initial claim submission.

Documentation of the Claimant's earnings in 2009 and 2010 fail to indicate that the Claimant sustained an actual financial loss in the period following the Deepwater Horizon oil spill. In 2010, the Claimant reported wages of \$16,954.00, as compared to wages of \$16,186.48 in 2009. It seems then that the Claimant's income slightly increased in 2010 as compared to 2009.¹¹ The increase in the Claimant's income fails to support her claim that her "hours and shifts were cut dramatically throughout the summer and fall of 2010."¹²

Regarding the Claimant's 2011 losses, the Claimant notes that she resigned as a result of a decrease in working hours and shifts as a result of the Deepwater Horizon oil spill. However, as noted above, the Claimant's financial data does not indicate that the Claimant actually lost income in 2010. Therefore, it seems that any loss of income that the Claimant may have sustained in 2011 would be due to her decision to resign, and not due to the discharge of oil resulting from the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$25,000.00, 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: *7/5/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁰ On 23 June 2012, the NPFC granted the Claimant an extension to reply to the NPFC request, and asked that the Claimant reply by 2 July 2012.

¹¹ 2009, 2010 Forms 1040.

¹² See, Memo, 23 March 2012. The Claimant's employment with the company lasted from January 2009 until January 2011.