

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
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2445 2774

5890/DWHZ
29 November 2012

Mr. Kevin Reed


Re: Claim Number: N10036-1874

Dear Mr. Reed:

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 N10036-1874 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 N10036-1874.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1874
Claimant	Mr. Kevin Reed
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$8,400.00

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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a Transition Order (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 26 September 2012, Mr. Kevin Reed (the Claimant) submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$8,400 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.¹

The Claimant's submissions indicate that at the time of the Deepwater Horizon incident, Adecco Staffing Agency placed the Claimant at the Port of Panama City to work as a forklift driver.² The Claimant alleged that, due to the Deepwater Horizon incident, his employer cut his hours after reducing the number of available shifts from three per day to one before finally laying the Claimant off.³

As a result, the Claimant filed this claim seeking \$8,400 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4), § 2713, and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. One

¹ Optional OSLTF Claim Form, dated 08 September 2012.

² Optional OSLTF Claim Form, dated 08 September 2012.

³ Optional OSLTF Claim Form, dated 08 September 2012.

type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits and impairment of earning capacity due to injury to or destruction of natural resources.

33 C.F.R. § 136.233 requires that a claimant seeking loss of profits and impairment of earning capacity damages 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; and
- (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 seeking loss of profits or impairment of earning capacity damages 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, received 26 September 2012;
- GCCF Denial Letter, dated 30 April 2011;
- Correspondence re: Change of Address in GCCF File, undated;
- GCCF Change of Address Form, signed 30 April 2012;
- Gulf Power Electric Bill, billing period ending 23 April 2012;
- 2009 Form W-2 from Adecco U.S.A., Inc., showing \$3,906.00 in wages;

- 2010 Form W-2 from Adecco U.S.A., Inc., showing \$16,122.54 in wages;
- 2010 Form W-2 from City of Panama City, showing \$7,286.17 in wages;
- 2010 Form 1099-G from State of Florida Agency for Workforce Innovation, showing \$2,700 in unemployment compensation;
- Two partial GCCF Claim Forms, dated 23 October and 02 December 2010;
- Weekly Payroll Records from City of Panama City, for time period 07 October through 21 October 2010;
- Unidentifiable earnings record for time period 22 April through 08 July 2010;
- Weekly Payroll Records from Adecco for time period 18 April through 04 July 2010;
- Five Photocopied Proofs of Identification;
- Internal Revenue Service Correspondence, dated 29 September 2010; and
- Two Handwritten Claimant Testimonials.

On 26 September 2012, the Claimant presented this claim to the NPFC, seeking \$8,400 in loss of profits and impairment of earning capacity damages.⁴ Prior to submitting a claim to the NPFC, the Claimant first presented at least two claims to the RP/GCCF totaling at least \$9,700,⁵ but was denied.⁶ It appears that the Claimant's RP/GCCF claims were identical to the claim now before the NPFC. The NPFC deems this claim to have satisfied OPA presentation requirements. Accordingly, the NPFC may properly adjudicate this claim.

Additionally, evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

1. Economic and Property Damages Class Action Settlement

It appears that the Claimant is a member of the E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. Under OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate those rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in a request for reconsideration of this claim.

⁴ Optional OSLTF Claim Form, dated 08 September 2012.

⁵ Partial GCCF Claim Form, dated 23 October 2010; Partial GCCF Claim Form, dated 02 December 2010.

⁶ Optional OSLTF Claim Form, dated 08 September 2012.

2. *Failure to Establish Financial Loss in Amount Alleged Resulted From Deepwater Horizon Incident*

This claim is also denied on its merits because the Claimant has failed to establish either a financial loss or that his alleged financial loss resulted from the Deepwater Horizon incident. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss. The Claimant has failed to establish these required showings.

Under OPA, recovery for loss of profits and impairment of earning capacity damages “is limited to the actual net reduction or loss of earnings or profits suffered.”⁷ The Claimant has not provided documentation establishing that he suffered a financial loss. The Claimant’s submissions show that he earned a total of \$26,108.71 in wages in 2010.⁸ Evidence of the Claimant’s earnings from years prior to 2010; do not indicate that his earnings decreased in 2010. The Claimant has not provided full earnings documentation for 2008 and 2009, but the evidence the Claimant has provided shows him earning \$3,906 in wages in 2009⁹ and \$25,868 in 2008.¹⁰ As the Claimant’s documentation shows his 2010 earnings increased over his 2008 and 2009 earnings, he has failed to establish a financial loss in the amount alleged.

Similarly, the Claimant has failed to establish that the Deepwater Horizon incident was the cause of any alleged financial loss. The Claimant has not provided evidence establishing the Deepwater Horizon incident as the cause of his alleged financial loss aside from an allegation that it was the Deepwater Horizon incident that caused his employer to reduce available shifts, thereby reducing his pay.¹¹ This allegation, without more, is insufficient to establish the required causal link between the Deepwater Horizon incident and his alleged financial loss.

CONCLUSION

This claim of \$8,400 is denied in its entirety, as the Claimant has not demonstrated (1) a financial loss in the amount alleged, 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. Finally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor:  *NPF Claims Adjudication Division*

Date of Supervisor’s Review: *11/29/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁷ 33 C.F.R. § 136.235.

⁸ 2010 Form W-2 from Adecco U.S.A., Inc.; 2010 Form W-2 from City of Panama City; 2010 Form 1099-G from State of Florida Agency for Workforce Innovation.

⁹ 2009 Form W-2 from Adecco U.S.A., Inc.

¹⁰ Internal Revenue Service Correspondence, dated 29 September 2010.

¹¹ Optional OSLTF Claim Form, dated 08 September 2012.