

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)
Phone: 800-280-7118
E-mail:
Donna.M.Hellberg@uscg.mil
Fax: 703-872-6113

5890
06/26/2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7214 9609

Mr. Ben Cobbinah



RE: Claim Number: N10036-1905

Dear Mr. Cobbinah:

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 N10036-1905 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,



Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1905
Claimant	: Ben Cobbinah
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits or Impairment of Earning Capacity
Amount Requested	: \$33,885.00

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.

On 8 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 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 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT:

On 9 April 2013, Mr. Ben Cobbinah ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$33,885.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

Since 2003, the Claimant has been employed by a company servicing the oil and gas industry primarily in the Gulf of Mexico. The Claimant alleged that beginning in January of 2011, his employer changed his working schedule, causing him to sustain a loss of earnings in that year totaling \$33,885.00. A 7 January 2011 letter from the Claimant's employer to the Claimant states that,

due to a recent, rapid decline in our business activity in the GoM resulting from the continuation of the de-facto drilling moratorium, we are reducing the number of vessels that will remain active and "work ready."²

As a result of the lack of work, the Claimant's hours were reduced, causing him to sustain the loss of earnings that are the subject of this claim.

The NPFC originally denied the claim on 16 April 2013 because the Claimant failed to provide evidence sufficient to prove that his 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 discharge of oil.

¹ Claim Cover Letter, 2 April 2013.

² Letter from the Claimant's employer re change in work schedule, 7 January 2011.

REQUEST FOR RECONSIDERATION:

On 15 May 2013, the NPFC received the Claimant's request for reconsideration of this claim. The Claimant provided (1) a letter asserting that his losses were caused by the Deepwater Horizon oil spill and not the moratorium on drilling in the Gulf of Mexico, (2) details regarding the classification of claimants within the Deepwater Horizon Economic & Property Damage class action settlement (E&PD Settlement), (3) Exhibits to Deepwater Horizon Economic & Property Damages Settlement Agreement as Amended on May 2, 2012, MDL No. 2719, (4) Deepwater Horizon Claims Center Status, and (5) Deepwater Horizon Economic and Property Settlement Individual Economic Loss Claim Form.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. Under 33 CFR § 136.115(d), The NPFC, upon written request of the claimant, will reconsider any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim.

Upon receipt of the Claimant's request for reconsideration, the NPFC performed a *de novo* review of the entire claim submission.

This review sought to determine whether or not the Claimant provided evidence on reconsideration sufficient to prove that the Claimant's loss was due to damage to real property or natural resources caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

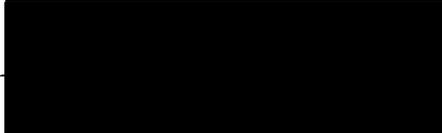
The Claimant asserts that because he did not lose his job after 28 May 2010, his losses were not caused by the moratorium, but rather by the Deepwater Horizon oil spill. However, an examination of the Claimant's entire record indicates that the Claimant's hours with Hornbeck Offshore were reduced as a result of the drilling moratorium implemented in the Gulf of Mexico on 28 May 2010. If the Claimant's losses had been caused by the oil spill and not the moratorium, the Claimant's documentation should reflect that his pay had decreased at some point between 20 April 2010 and 28 May 2010, or shortly thereafter. However, documentation regarding the Claimant's pay indicates that his schedule was not altered until January of 2011.³

There is no indication in the Claimant's file that the change in his schedule in 2011 could have been caused by anything other than the drilling moratorium. The timing of the Claimant's loss, letters from the Claimant's employer, and several statements made by the Claimant specifically indicate that the Claimant's losses are due to the drilling moratorium and not due to the oil spill. Furthermore, even if the Claimant had been servicing a rig which was unreachable due to the Deepwater Horizon oil spill itself, the Claimant would then be a member of the Deepwater Horizon Economic and Property Damage Class action settlement class, and would not be eligible to recover funds from the OLSTF as this claim would be considered settled by virtue of the Court's approval of the settlement agreement.

³ Letter from the Claimant to the GCCF, 18 January 2011; See also, Letter from Hornbeck Offshore to the Claimant, 11 January 2011; See also, claimed loss period, 3/28/2011 to 6/28/2011.

Based on the foregoing, this claim is again denied because the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of damage to real property or natural resources caused by the discharge of oil (i.e., the Deepwater Horizon oil spill).

This claim is denied upon reconsideration.

Claim Supervisor:  *Thomas Morrison*

Date of Supervisor's review: *06/26/13*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: