

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
June 10, 2013

CERTIFIED MAIL NUMBER: 7011 1570 0001 2445 1746

Dennis Gray


RE: N10036-1906

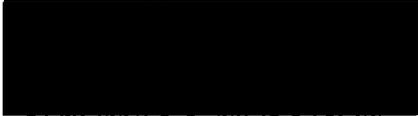
Dear Mr. Gray:

The National Pollution Funds Center (NPFCC), in accordance with 33 CFR Part 136, denies payment on the claim number involving the DEEPWATER HORIZON - N10036 oil spill.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

Disposition of this reconsideration constitutes final agency action.

Sincerely,


THOMAS S. MORRISON
Chief, Claims Adjudication Division
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number:	N10036-1906
Claimant:	Dennis Gray
Type of Claimant:	Private (US)
Type of Claim:	Loss of Profits and Earnings
Claim Manager:	Donna Hellberg
Amount Requested:	\$68,194.00

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 9 April 2013, Mr. Dennis John Gray, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$296,833.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

In July of 2010, the Claimant began a job with Neptune Marine Services, working in the offshore oil and gas industry. The Claimant alleged that the contract guaranteed him three years of employment with the company.² However, in February of 2011, he was released from his employment due to "the significant and prolonged downturn in the oil and gas services industry in the Gulf of Mexico."³

The Claimant seeks to recover the compensation he would have earned had he been employed with the company for three years. As such, the Claimant seeks to recover loss of profits damages in the amount of \$296,833.00.

The NPFC denied the claim originally on April 25, 2013 on the basis that the Claimant alleged that his employment contract was terminated prematurely as a result of "the significant and prolonged downturn in the oil and gas services industry."⁴ Because this is not a loss caused by the discharge of oil into the Gulf of Mexico as a result of the Deepwater Horizon oil spill, it is not a compensable loss under OPA and is denied because the Claimant has failed to provide evidence sufficient to prove that he sustained a

¹ Optional OSLTF Claim Form signed on 12 March 2013.

² The Claimant provided a copy of the contract, but it is mostly illegible.

³ Letter from the Claimant's employer, 28 February 2011.

⁴ Letter from the Claimant's employer, 28 February 2011.

financial loss in the amount of \$296,833.00 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.

REQUEST FOR RECONSIDERATION:

In an undated letter received by the NPFC on 4 June 2013, the Claimant requested reconsideration and has provided new supporting documentation which he states is ...”overwhelming data support my claim”. The Claimant has provided a three-page letter outlining his request for reconsideration and has provided the following documentation: email dated May 21, 2013 from the CEO of Neptune Marine Services (previous employer) to Claimant, duplicate copy of a letter provided in the original claim submission dated February 28, 2011 from Kenneth Nimitz of Neptune Marine Services confirming Dennis Gray’s employment and reason for termination, a copy of the Claimant’s employment contract with Neptune dated June 10, 2010, IRS income transcript for December 2011 and December 2012, and a copy of 2011 and 2012 Tax Rate Schedules.

On reconsideration, the Claimant has amended his sum certain from \$296,833.00 to \$68,194.00⁵. The Claimant asserts that the email from Neptune’s CEO confirms without question that the termination of his employment contract as well as the sale/giveaway of Neptune’s business in North America were due to the Deepwater Horizon incident. The Claimant further asserts that his impaired earnings are the earnings he would have received in 2011 and 2012 had the oil spill not happened less the actual earnings he made. The Claimant provided tax records along with an itemized breakdown of how he has calculated his revised loss for this claim.

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. The NPFC considered all the documentation submitted by the Claimant. 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. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

This review sought to determine whether or not the Claimant provided evidence on reconsideration sufficient to prove (1) that the Claimant sustained a financial loss in the amount alleged, and (2) that the Claimant’s loss was due to the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

Upon consideration of all information and arguments made by the Claimant on reconsideration, the NPFC has determined that the basis for the initial denial of this claim remains valid. The NPFC concluded in the original determination, that the Claimant had alleged that his employment contract was terminated prematurely as a result of “the significant and prolonged downturn in the oil and gas services industry.”⁶ Additionally on reconsideration, the Claimant provided an email he received from Robin King, CEO of Neptune, which stated in relevant part ...”I can confirm that the economic downturn in

⁵ See undated Request for reconsideration letter rec’d by NPFC on June 4, 2013.

⁶ Letter from the Claimant’s employer, 28 February 2011.

Neptune's US business was not caused you but rather was caused by the general market downturn in Gulf of Mexico work following the Deepwater Horizon Incident at BP's Macondo well."

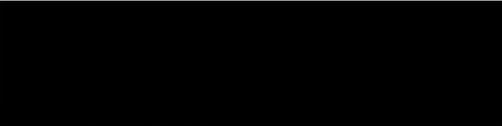
The Claimant asserts in his reconsideration letter that without question, his termination was due to Macondo. The NPFC disagrees with the Claimant's assertion. All evidence presented states it was the general market downturn in the Gulf following the oil spill which is not the result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. No evidence has been presented by the Claimant's prior employer that demonstrates the actual cause of the business losses other than what was stated by principals of the company as general market downturn.

Additionally, the Claimant amended his sum certain and requests \$68,194.00 which he states is his loss of profits for this claim. The Claimant's basis for this figure is two years of salary at a rate of \$140,000.00 per year for 2011 and 2012 had he stayed employed with Neptune and then the Claimant states per Clause 3 of his employment contract with Neptune provides that he could receive a bonus of 0% to 25% and so he has opted to use 13% of his annual salary as a fair calculation of potentially lost bonus money per year for a two year period which equates to \$36,400.00. As such, the Claimant's calculation is \$280,000.00 salary for two years with Neptune plus \$36,400.00 in anticipated bonus income for two years which equals \$316,400.00. Then the Claimant deducted his annual income of \$248,205.00 for 2011 and 2012 which resulted in \$68,194.00 that the Claimant requests as his lost profits.

Aside from the fact that the Claimant has failed to demonstrate his loss of employment was due to the discharge of oil into the Gulf of Mexico as a result of the Deepwater Horizon oil spill, the Claimant has not demonstrated the amount requested is an actual loss since part of the Claimant's calculation is speculative in nature with respect to bonuses not guaranteed.

Based on the foregoing, this claim is again denied because (1) the Claimant has failed to prove that he sustained a financial loss in the amount of \$68,194.00, and (2) 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 a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill).

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: 6/10/13

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: