

U.S. Department of
Homeland Security

**United States
Coast Guard**

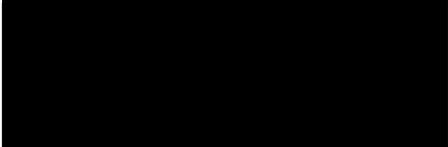


Director
National Pollution Funds Center
United States Coast Guard

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 7674

5890
22 May 2012

Greenspoon Marder, P.A.


RE: Claim Number: N10036-1760

Dear Mr. Reynolds:

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 N10036-1760 involving Deepwater Horizon. 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 N10036-1760.

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

Copy to: Sarah D. Shelton


U.S.P.S. Certified Mail Receipt
Number 7011 1570 0001 4803 7698

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1760
Claimant	: Sarah D. Shelton
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$48,400.00

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 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 12 April 2012, Robert A. Reynolds, Esquire, on behalf of Sarah D. Shelton (jointly referred to as 'the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$48,400.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant is employed as an accountant in Niceville, Florida. The Claimant asserts that she lost income in 2010 and 2011 by losing pay for two months in November and December of each year, as well as loss of annual raises for those years. Additionally, the Claimant asserts additional losses due to an "industry effect multiplier".²

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.

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

¹ Greenspoon Marder letter to the NPFC, dated 4 April 2012 and received 12 April 2012.

² Lost Earnings/Income Worksheet dated 21 March 2012.

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 presented the following documentation:

- Greenspoon Marder letter to the NPFC dated 4 April 2012 and received 12 April 2012.
- NPFC Authorization Agreement executed 21 March 2012 by Sarah D. Shelton.
- GCCF Full Review Final Payment Claim Form dated 8 November 2011.
- Deepwater Horizon Lost Earnings/Income Worksheet dated 21 March 2012.
- Florida Driver License Class E, issued 2 April 2008.
- Claimant letter to GCCF dated 17 November 2011.
- Letter from Stephen Shelton, CPA to GCCF dated 23 November 2011.
- 2008 Form 1040 Income Tax Return (joint) with Schedules A, B, & E, and Forms 2441 & 8889.
- 2008 Form W-2 from Stephen Shelton CPA.
- 2009 Form 1040 Income Tax Return (joint) with Schedules A, B, E, & M, and Forms 2441, 4797 & 8889.
- 2009 Form W-2 from Stephen Shelton CPA.
- 2010 Form 1040 Income Tax Return (joint) with Schedules A, B, E, & M, and Forms 2441 & 8889.
- 2010 Form W-2 from Stephen Shelton CPA.
- 2011 Form 1040 Income Tax Return (joint) with Schedules A, E, & M, and Forms 2441 & 8889 & 5695.
- 2011 Form W-2 from Stephen Shelton CPA, Inc.

- Claimant's GCCF Attorney Authorization Form dated 8 November 1011.
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 22 March 2012.
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 20 January 2012.

On 12 April 2012, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$48,400.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.³ The Claimant is employed as an accountant in a CPA firm located in Niceville, Florida. The Claimant asserts that she lost income in 2010 and 2011 because the company lost clients subsequent to the oil spill.⁴ The Claimant also calculated additional losses due to an "industry effect multiplier".⁵

The Claimant indicated that she submitted a Full/Final Review Claim on 8 November 2011.⁶ The Claimant indicates that responsible party has denied her claim.⁷

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed presentment to the GCCF of an Interim Payment (IP) Claim on 19 April 2011, assigned GCCF Claim No. 9360257, and a Full Review Final Payment (FRP) Claim on 21 December 2011, assigned GCCF Claim No. 9549657. The NPFC also confirmed that the GCCF applied Claimant Identification No. 3513805 to both of those claims.⁸ The NPFC also reviewed the FRF Claim presented to the GCCF and confirmed that the claim amount of \$48,400.00 had been presented to the GCCF.⁹ Based upon the information provided and independent verification by the NPFC, this claim can be adjudicated in the full amount of damages presented to the NPFC, \$48,400.00.

NPFC Determination

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. The NPFC considered all of the documentation presented by the Claimant.

This claim is denied because the Claimant failed (1) to prove that her incurred damages in the amount alleged, and (2) failed to prove that the alleged loss was due to the Deepwater Horizon oil spill.

(1) Failure to Prove Loss of Earnings

The Claimant asserts a loss of income in 2010 and 2011 due to the Deepwater Horizon oil spill.¹⁰ The Claimant provided 2008, 2009, 2010 and 2011 federal tax returns; 2008, 2009, 2010, and 2011 W-2s; and a letter from her employer.¹¹

³ Greenspoon Marder letter to the NPFC, dated 4 April 2012 and received 12 April 2012.

⁴ GCCF Full Review Final Payment Claim Form dated 8 November 2011.

⁵ Lost Earnings/Income Worksheet dated 21 March 2012.

⁶ Greenspoon Marder letter to the NPFC, dated 4 April 2012 and received 12 April 2012, and GCCF Full Review/Final Payment Claim Form dated 8 November 2011.

⁷ Greenspoon Marder letter to the NPFC, dated 4 April 2012 and received 12 April 2012, and GCCF Denial Letter on Interim Payment/Final Payment Claim dated 20 January 2012.

⁸ Transition Program – U.S. Coast Guard Report as of 1 May 2012.

⁹ GCCF Full Review Final Payment Claim Form dated 8 November 2011.

¹⁰ GCCF Full Review Final Payment Claim Form dated 8 November 2011, Deepwater Horizon Lost Earnings/Income Worksheet dated 21 March 2012 and Claimant's letter to the GCCF dated 17 November 2011.

First, the Claimant asserts that she was not paid for working in November and December of 2010 and 2011. Based on the annual information received, the NPFC cannot verify the Claimant's assertion that she had received a \$6,000.00 annual pay raise in 2010 and not been paid for the last two months. Based on the financial documentation provided to the NPFC, the Claimant could have been paid for 12 months with an annual pay raise of \$1,000.00. In either case, the Claimant's 2010 income exceeded her 2009 income by \$1,000.00.

Second, the Claimant asserts that she did not receive an additional, scheduled pay raise of \$6,000.00 in 2011. The 2011 W-2 amount indicates the Claimant was paid the same total in 2011 as she was paid in 2010. Although the employer provided a letter on the Claimant's pay, the amounts stated in that letter are not consistent with the Claimant's W-2 forms provided. Additionally, the Claimant has not provided written documentation that had memorialized the alleged schedule of raises.

The Claimant has not provided sufficient financial documentation with which her alleged loss can reasonably be measured; therefore, the alleged losses are not proven. If the Claimant submits a request for Reconsideration to the NPFC, additional financial evidence, such as pay stubs or bank statements showing her monthly income for 2010 & 2011 and historical documentation from her employer showing the alleged pay raise schedule, must be submitted in order for this claim to be successful.

Failure to Prove Causation

The Claimant asserts that her alleged loss of income is due to the oil spill.¹² The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven the Claimant.

Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill. The Claimant has not provided documentation supporting that her employer's main clients are from the fishing industry, real estate, retail and restaurants. Likewise, the Claimant has not documented that those clients were adversely affected by the oil spill, not other factors, such as the economy.

The Claimant provided financial documentation showing her employer's income for 2008 through 2011. That documentation shows that the employer's income in 2010 was \$2,304 greater than in 2009, as well as that the employer's 2011 income was \$859 less than 2009 income.¹³ The 2010 employer revenue does not reflect the loss in clients asserted by the Claimant and the Claimant has not shown why clients who stayed with the company in 2010 would leave in 2011.

The Claimant has not proven that the Deepwater Horizon oil spill was the cause of her alleged losses. If the Claimant submits a request for Reconsideration to the NPFC, evidence linking her loss and the loss of her employer to the Deepwater Horizon oil spill must be submitted in order for this claim to be successful.

¹¹ 2008, 2009, 2010 & 2011 Form 1040 Income Tax Returns (joint) with Schedules & Forms; 2008, 2009, 2010 & 2011 Forms W-2; and Letter from Stephen Shelton, CPA to GCCF dated 23 November 2011.

¹² Greenspoon Marder letter to the NPFC, dated 4 April 2012 and received 12 April 2012; GCCF Full Review Final Payment Claim Form dated 8 November 2011; and Claimant's letter to the GCCF dated 17 November 2011.

¹³ Stephen Shelton CPA, Inc. tax return Schedule Es for 2008, 2009, 2010 and 2011.

This claim is denied for the following reasons: (1) the Claimant has failed to demonstrate her alleged loss through financial documentation; and (2) the Claimant has failed to demonstrate that her 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).

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/22/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: