

U.S. Department of
Homeland Security

United States
Coast Guard



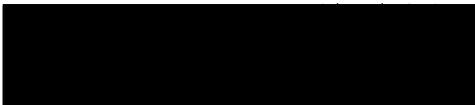
Director
National Pollution Funds Center
United States Coast Guard

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 9166

5890/DWHZ
15 June 2012

Michael Williams



Re: Claim Number: N10036-1775

Dear Mr. Barksdale:

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 N10036-1775 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 N10036-1775.

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

cc: Mr. Michael Williams
7709 Tamara Lee Court
Fort Myers, FL 33907

Certified Mail:
No. 7011 1570 0001 4803 9173

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1775
Claimant	Mr. Michael Williams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$14,176.92

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.

CLAIM AND CLAIMANT

On 24 April 2012, Arthur S. Barksdale IV, Esq., on behalf of Mr. Michael Williams (collectively the Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$14,176.92 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.

From 1 January 2010 until the present, the Claimant has worked as a server at Joe's Crab Shack in Ft. Myers, Florida.¹ The Claimant stated, "[T]he number of guests decreased drastically as a direct result of the BP Oil Spill in the Gulf of Mexico because consumers were afraid to eat seafood from the Gulf of Mexico."² The Claimant alleged that his hours were cut and his tips dropped dramatically as a result of the decreased dining traffic.³

The Claimant specifically asserted to have lost \$14,176.92 in income lost in 2010, allegedly due to effects of the Deepwater Horizon oil spill.⁴

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

¹ Hardship Letter, dated 08 February 2012.

² Hardship Letter, dated 08 February 2012.

³ Hardship Letter, dated 08 February 2012; GCCF Full Review Final Payment Claim Form, signed 07 February 2012.

⁴ Lost Earnings/Income Worksheet.

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; 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 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:

- Submission Letter, dated 20 April 2012;
- Authorization Agreement, dated 07 February 2012;
- GCCF Full Review Final Payment Claim Form, signed 07 February 2012;
- GCCF Client Authorization Form, dated 07 February 2012;
- GCCF Denial Letter, dated 07 April 2012;
- Lost Earnings/Income Worksheet, dated 19 March 2012;
- Photocopy of the Claimant's Florida Driver License;
- Hardship Letter, dated 08 February 2012;
- Affidavit outlining difficulty in receiving an employment verification letter, dated 18 February 2012;
- Testimonial Letter from Ms. Kelly Brunelle, dated 12 March 2012;
- 2008 Form W-2 from Joe's Crab Shack Holdings;
- 2009 Form W-2 from Ignite Restaurant Group, showing January to June 2009 earnings;

- 2009 Form W-2 from Ignite Restaurant Group, showing July through December 2009 earnings;
- 2010 Form W-2 from Ignite Restaurant Group, LLC;
- 2010 Form W-2 from Veritas Employer Services, LLC;
- 2011 Form W-2 from Ignite Restaurant Group, Inc.;
- Tax Return Transcript for tax period ending 31 December 2008;
- 2009 U.S. Individual Income Tax Return, including Schedule M;
- 2010 U.S. Individual Income Tax Return;
- 2011 U.S. Individual Income Tax Return, including Supporting Details for Form 1040, Line 21; and
- Pay stub for period ending 13 February 2012.

Prior to presenting this claim to the NPFC, the Claimant presented a Full Review Final Claim (FRF) to the GCCF on 07 February 2012.⁵ The RP/GCCF assigned Claimant ID # 1641935 to the Claimant, and assigned the FRF claim # 9585282.⁶ The RP/GCCF denied payment on the FRF claim.⁷

On 10 February 2012, the Claimant presented this claim to the NPFC, seeking \$14,176.92 in loss of profits and earning capacity damages.⁸ Based upon the Claimant's submissions, it appears that the subject matter for the RP/GCCF claim is identical to the claim now before the NPFC—i.e., that the Claimant suffered reduced earnings as a result of the Deepwater Horizon incident. The NPFC deems the Claimant's prior claim with the RP/GCCF to satisfy OPA presentation requirements.⁹ Accordingly, this Claim Summary and Determination addresses the damages claimed in the Claimant's prior submission to the RP/GCCF.

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.

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 is seeking \$14,176.92 in lost profits damages.¹⁰ The Claimant calculated these losses by subtracting his 2010 earnings from his 2011 earnings.¹¹ The Claimant began working as a server at Joe's Crab Shack in Fort Myer's Florida, in January of 2010. Therefore, the Claimant's 2011 earnings, rather than his 2008 and 2009 earnings are presumably a more relevant indicator of what the Claimant could have earned in 2010 had the oil spill not occurred.¹²

⁵ GCCF Full Review Final Payment Claim Form, signed 07 February 2012.

⁶ GCCF Denial Letter, dated 07 April 2012.

⁷ GCCF Denial Letter, dated 07 April 2012.

⁸ Submission Letter, dated 20 April 2012.

⁹ 33 C.F.R. § 136.103(a).

¹⁰ Submission Letter, dated 20 April 2012.

¹¹ Lost Earnings/Income Worksheet, dated 19 March 2012.

¹² Hardship Letter, dated 08 February 2012.

In a letter dated 08 May 2012, NPFC requested that the Claimant provide additional information in support of this claim.¹³ The NPFC requested that the Claimant answer questions and provide certain documentation meant to establish the required causal link between the Deepwater Horizon incident and the Claimant's alleged losses.¹⁴ Neither the Claimant, nor his legal representative responded to this request for additional information. Accordingly, the NPFC adjudicated this claim based on documentation included in the Claimant's original submission.

Financial documentation included in this claim submission shows that the Claimant's total 2010 earnings were lower than his earnings in 2011.¹⁵ The Claimant alleged that this is because he worked fewer hours and received fewer tips due to decreased restaurant traffic following the oil spill.¹⁶ In a phone conversation with an Ignite Restaurant Group human resources representative, the NPFC confirmed that the Claimant worked approximately ten fewer hours per week in 2010 than he did in 2011.¹⁷

However, the Claimant has not provided pay stubs or other evidence to show when his income actually began to decrease. It is unclear whether the Claimant was consistently earning lower pay in 2010 than in 2011, or if the Claimant's earnings actually decreased in the period following the Deepwater Horizon oil spill.

The Claimant has also failed to provide documentation establishing that the Deepwater Horizon incident caused a reduction in his hours. The NPFC requested that the Claimant provide evidence indicating that business at his place of employment was indeed affected by the Deepwater Horizon incident.¹⁸ However, as noted above, the Claimant failed to respond to this request. The Claimant has therefore failed to provide documentation that would demonstrate (1) that customer volume decreased following, and as a result of, the oil spill, and (2) that decreased customer volume lead to the Claimant's reduction in tips and hours.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$14,176.92, 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: *6/15/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹³ Additional Information Request, dated 08 May 2012.

¹⁴ Additional Information Request, dated 08 May 2012.

¹⁵ 2010 U.S. Individual Income Tax Return; 2011 U.S. Individual Income Tax Return.

¹⁶ Hardship Letter, dated 08 February 2012; GCCF Full Review Final Payment Claim Form, signed 07 February 2012.

¹⁷ The Claimant worked an average of 21.26 hours per week in 2010, and an average of 31.41 hours per week in 2011. PHONECON: NPFC Staff and Ignite Restaurant Group Human Resource Department, 26 April 2012 TM.

¹⁸ Additional Information Request, dated 08 May 2012.