

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**SUPER PETROLEUM**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:44 IV liquidated damages  
**Employer:** Super Petroleum 320 S. Broadway, Salem, NH 03079  
**Date of Hearing:** December 30, 2015  
**Case No.** 49226

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on November 7, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on December 4, 2014.

The claimant testified that she was hired as a cashier on September 4, 2014. She was an hourly employee and she punched in on the register to record hours worked. The claimant said that she left her employment on October 16, 2014 and she mailed her store keys to the corporate offices. During her testimony the claimant did say that her last day of actually performing work was on October 9, 2014.

The claimant stated that she was aware of an internal investigation being conducted because there was a situation where there were store funds missing. The claimant feels that she is due damages because the employer made her take a day off during the investigation and during that week she had a parent and a grandparent die and so she was entitled to bereavement leave. The claimant feels the employer owes her the time between October 9, 2014 and October 16, 2014.

The employer testified that the claimant was called in to get her paycheck stub and she was aware there was an ongoing investigation. The claimant did not raise any issues and left the business and left her store keys at the store. The employer accepted this as a voluntary separation from employment. The employer does not have any regulations about bereavement leave and does not know where the claimant is getting this information.

There was a slight delay in her last check but it was not a long delay and the claimant was paid all wages due and is not due any leave time.

**FINDINGS OF FACT**

RSA 275:44 IV. If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

This part of the law allows for a claimant to seek damages up to the amount of the Wage Claim when the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that the employer did not pay wages in a timely fashion and did this in a willful manner, without good cause. The claimant did not meet this burden.

The claimant was not credible in her testimony that the employer did not have good cause to delay the final check. The claimant was also not credible in her testimony about bereavement leave. Her testimony was that every employer she worked for had a bereavement leave policy but she could not provide any for this employer. In fact, she did not know if she was entitled to any type of leave.

The employer provided credible testimony that the claimant quit and did not mail her keys to the corporate office but left them in the store when she walked out. The employer also said there was no leave due to the claimant.

The Wage Claim with the request for liquidated damages is invalid.

**DECISION AND ORDER**

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: January 20, 2015

TFH/kdc