

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CERTIFIED MEDICAL EXPERTS OF AMERICA

DECISION OF THE HEARING OFFICER

Appearances: Brian C. Shaughnessy ESQ., Attorney for the Claimant

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Certified Medical Experts of America, 14 Stiles Road, Salem, NH 03079

Date of Hearing: February 4, 2014

Case No. 46488

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 5, 2013. 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 19, 2013.

The claimant testified that she was hired into a temporary position with the employer in May of 2012. In November of 2012 she was hired into the same position as a full time employee. The claimant said that she was hired at 75 hours per a two week pay period. Her pay rate was \$20.00 per hour.

The claimant said that she was required to go to the Post Office after work hours and she often went to the Manchester Post Office because it was opened later than the Salem Post Office. Sometimes she got home so late she had to drop off mail on Saturday in Manchester, where she lived. She also said that she inquired about the payment of overtime but never followed through on it. One of her points about not "pushing" the issue was that she needed the job and did not want to challenge the employer.

The claimant said that she was not required to punch a time clock or keep track of her hours.

The employer questioned the figure of 300 hours as unpaid time. The employer testified that the office was run on the "honor system" and there had been problems with the claimant leaving work early and coming into work late. The record shows that there were discussions

with the claimant about these problems. Because of the size of the office, the employer said there were no time clocks and there were no issues with overtime.

The employees were never asked to go to the Post Office after hours. One employee stated that she was never asked to work on company business after hours. The employees are not asked to purchase office supplies on their own time.

The employer said that the standard pay period was 75 hours and this was always paid even if the employee was on leave or during a holiday.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony provided for the hearing, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and she met this burden.

It was difficult to make a ruling in this case because there was not a clear understanding as to when the claimant worked or the rules of the company. The claimant testified that she performed her duties outside of the regular office hours and was never paid for the extra time. The record also shows that the claimant was advised about her actual time worked.

The employer stated that the position probably should have been a salaried position but this was not the case. The employer said that the claimant did not adhere to the scheduled time and they tried to correct this. The claimant was also allowed to make Post Office visits during the work day and seldom did this. The claimant also took it upon herself to purchase office supplies, a non approved task, and did so on her own time.

The claimant and the employer had good positions in this Wage Claim. The testimony points out that the claimant did much work outside of the normal workday. The testimony also shows the frustration of the employer in trying to correct a time problem with the claimant.

Over the period of time the claimant was clear that she worked outside of the normal work hours. This is what the Wage Claim is all about.

The employer admitted the claimant should have been a salaried position but this was not done. The law requires that an employer keep all of the records of a person's employment. The employer's testimony that the office was run on an honor system, does not negate the need for accurate reporting of hours. The employer could not provide any statistics of time worked and it is found that there was concern of working beyond the normal scheduled hours, the fact remains that the employer could not justify their position that the claimant did not work the hours she claimed.

The Wage Claim is valid in the amount of \$6,000.00.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Hearing Officer finds that the claimant proved that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$6,000.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$6,000.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 5, 2014

Original: Claimant
cc: Employer

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TFH/all