

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



**V**

**GATE CITY ELECTRIC LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:48 I/II illegal deductions from wages

**Employer:** Gate City Electric LLC, PO Box 3554, Nashua, NH 03061

**Date of Hearing:** March 5, 2014

**Case No.** 47225

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on December 24, 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 February 5, 2014.

The claimant testified that he worked for the employer for two and a half years. He was paid weekly and he paid 50% of his insurance premiums. The amount was deducted from his wages. While he was employed he scheduled two doctor's appointments for March 1, 2013.

The claimant was laid off from his position with the company on February 27, 2013. It was announced in a letter to the claimant dated February 28, 2013 that his insurance was cancelled and that he would have the option of implementing the COBRA provisions under the federal mandates. There was also a check for \$192.08 for premiums the claimant paid into March.

The claimant did not cancel the Doctor's appointments because he understood that he was paid a month in advance. His last wages reflected this when he received a refund of premiums. The claimant also said that he did not get the notice of lay-off until March 3, 2014 and had already gone to the scheduled appointments.

The employer said that the letter of termination of employment stated that all insurance was terminated as of the date of the lay-off letter. The insurance(s) were canceled as of the day of separation and the claimant had signed all the terms of the employment contract.

### **FINDINGS OF FACT**

RSA 275:48 I Withholding of Wages. – I.

No employer may withhold or divert any portion of an employee's wages unless:

(a) The employer is required or empowered to do so by state or federal law, including payroll taxes.

(b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or for any of the following:

- (1) Union dues;
- (2) Health, welfare pension, and apprenticeship fund contributions;
- (3) Voluntary contributions to charities;
- (4) Housing and utilities;
- (5) Payments into savings funds held by someone other than the employer;
- (6) Voluntary rental fees for non-required clothing;
- (7) Voluntary cleaning of uniforms and non-required clothing;
- (8) The employee's use of a vehicle under RSA 261:111, III;
- (9) Medical, surgical, hospital and other group insurance benefits without financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded; and

(10) Required clothing not covered by the definition of uniform.

(c) The deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books.

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

(1) Voluntary contributions into cafeteria plans or flexible benefit plans, or both, as authorized by section 125 or section 132 of the Internal Revenue Code.

(2) Voluntary payments by the employee for the following:

- (A) Child care fees by a licensed child care provider.
- (B) Parking fees.
- (C) Pharmaceutical items, gift shop, and cafeteria items purchased on site of a hospital by hospital employees.

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

- (A) The time the payments will begin and end.
- (B) The amounts to be deducted.
- (C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:

- (A) The recovery is agreed to in writing.
- (B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.
- (C) The written agreement specifies:
  - (i) The date the recovery of the overpayment will begin and end.
  - (ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in

any pay period.

(iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(6) Voluntary payments for the employee's use of a health or fitness facility that is sponsored by the employer for the benefit of its employees and that is located within the employer's facility or workplace, or operated by a private health and fitness facility that offers discounted memberships of 50 percent or more to all employees of the employer, as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(e) The employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages.

(f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

RSA 275:48 II. If an employer making a deduction of an employee's wages under paragraph I fails to make any payment relative to such deduction on the employee's behalf and such employee loses any benefit or fails to meet an obligation caused by such failure, the employer shall be liable for such lost benefit or failed obligation. For any benefits provided to an employee paid for entirely by the employer without employee deductions, if the employer fails to make timely payments for such benefits and the employee loses any benefit or fails to meet any obligations caused by such failure, then the employer shall be liable for such lost benefits or failed obligations. The employer shall also be liable to any cost incurred by the employee caused by the employer's failure to make such payments.

This is the section of the law that explains when and how deductions can be made from wages. In this case it was an authorized deduction for medical insurance coverage. The claimant paid 50% of the coverage and the employer paid the other 50%.

The claimant has the burden to show that there were illegal deductions and in this claim he carried his burden. The claimant was credible in the testimony that he felt he was covered. He scheduled the appointments while he was covered and attended the appointments while he felt he was covered.

The employer was consistent in their actions but failed to notify the claimant in a timely manner. The employer had already deducted the premium when the lay-off happened. The employer made it clear in a letter that the coverage stopped on the date of the letter but that letter did not reach the claimant for several days.

The claimant had money deducted to cover his share of the premium. The employer stopped the coverage after the claimant had wages deducted. The appointment(s) that the claimant attended were held prior to his notice being received. The Wage Claim was for \$492.86, the employer returned \$192.08. The Wage Claim is valid in the amount of \$300.78.

### **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 by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$300.78.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$300.78, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: March 26, 2014

Original: Claimant  
cc: Employer

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