

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Anthony Inverso, State Farm Agent

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:43 I unpaid bonus
RSA 275:43 I unpaid commissions

Employer: Anthony Inverso, State Farm Agent, 18 Wendy Way, Saco, ME
04072

Date of Hearing: June 23, 2014

Case No.: 47905

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$1,323.00 in unpaid commission for January 2014. She states that her rate of pay was changed without her agreement for January 2014 during a December 2013 annual company meeting. She further alleges the employer verbally agreed to pay her the full commission for January 2014 because it was a transition to a new compensation arrangement.

The employer denies the claimant is due any further wages. The claimant had asked to have a greater role than a receptionist and write policies. The employer changed her position and compensation from hourly to commission during a December 2013 meeting. The new compensation package became effective January 1, 2014. He provided a sample compensation chart at the meeting. He admits he stated that he would be willing to supplement the new compensation plan at his discretion, based on results, attitude and willingness to change. He believes the claimant misunderstood his statement.

FINDINGS OF FACT

The claimant worked for the employer from October 1, 2013 through January 31, 2014. She was originally hired at a rate of \$13.46 per hour plus commissions. The employer changed her rate of pay during a December 2013 meeting, to be effective January 1, 2014. The new compensation plan consisted of a monthly base of \$1,458.33, payable semi-monthly, and an additional commission plan.

The claimant argues the employer agreed to pay the full commission outlined in the sample commission plan, salary base of \$1,458.33 and \$1,523.00 in commissions. She is not claiming the full commission of \$1,523.00, as it includes a \$200.00 renewal commission for six month policies, to which she would not be entitled. She seeks the balance of \$1,323.00. She also argues she did not fill out an application for the new position.

The employer argues he notified the claimant, in writing, as to her new compensation arrangement. He further admits he stated that he would be willing to supplement the new compensation plan, at his discretion, based on results, attitude and willingness to change. He argues the claimant made a complaint regarding the new compensation arrangement and that she was unable to work for the reduced amount on January 17, 2014. He advised the claimant to read the handbook and compensation agreement and then they would discuss it. The claimant agreed she would resign January 21, 2014, but the employer told her she could stay on for a bit. On January 31, 2014, they had a meeting sometime between 11:00am and 12:00pm. They agreed it would be the claimant's last day. She signed a separation agreement. He told her she could stay for the remainder of the day, but she chose to leave early.

RSA 275:49 I requires that an employer inform employees of the rate of pay at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of her new compensation arrangement. The claimant's argument that she did not agree to the new arrangement is not persuasive. Nothing in the statute requires an employees consent to change their rate or method of pay, only that they are notified in writing, prior to the change.

The claimant was aware of the method of payment under which she would be working effective January 1, 2014. The employer provided credible testimony that he stated that he would be willing to supplement the new compensation plan, at his discretion, based on results, attitude and willingness to change. The claimant was not happy with her position and method of payment and expressed her desire to leave. She chose to leave her position earlier than the employer's timeframe given by the employer.

The employer exercised his discretion to not supplement her base salary.

Further, the written policy in the 2014 Agent's Team Member handbook, Section III compensation states, in relevant part, If an employee leaves mid-bonus period, the employee will forfeit that bonus.

The claimant, by her own testimony, left of her own accord on January 31, 2014, after the employer allowed her to stay for the full scheduled shift. She did not complete the regular scheduled bonus period for January 2014.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed wages/commissions under the written policy of the employer.

The base monthly rate provided by the employer stated \$1,458.33. The claimant was paid on a semi-monthly basis. The gross semi-monthly payment to the claimant should have been \$729.17. The employer paid the claimant \$710.15 on January 17, 2014, for the period of January 1 through January 15, 2014, and \$710.15 on January 31, 2014, for the period of January 16 through January 31, 2014. The employer failed to pay the claimant the correct semi-monthly payment for two pay periods, resulting in wages due of \$38.04 (\$19.02 * two pay periods).

The Hearing Officer finds \$38.04 to be due and owing to the claimant.

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 Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages/commissions, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$38.04.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$38.04, less any applicable taxes, within 20 days of the date of this Order.

/s/

Melissa J. Delorey
Hearing Officer

Date of Decision: July 2, 2014

Original: Claimant
cc: Employer

MJD/clc