

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

V

[REDACTED] **dba The Man Cave Cut & Style**

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 unpaid commissions

Employer: [REDACTED] dba The Man Cave Cut & Style 10A Ladd St.,
Portsmouth NH 03801

Date of Hearing: October 15, 2014

Case No.: 48693

BACKGROUND AND STATEMENT OF THE ISSUES

The employer called the Department the morning of the hearing. She had mistaken the date for the following day. The Department granted her request to appear telephonically. She called the Department back and requested to hold the hearing at 9:30am, one hour later than the scheduled 8:30am, because she wanted to appear in person. As the claimant had no objection, the Department held the hearing until 9:30am. The employer called at 9:25am to say she was still in Raymond, NH, enroute from Portsmouth, NH. The employer testified telephonically for the hearing.

The claimant asserts she is owed \$400.00 in unpaid wages for hours worked between July 21, 2014 and August 6, 2014. She states she had an arrangement with the employer for \$250 per week working five days, or \$50 per day. She argues she worked five days for the week beginning July 21, 2014. On July 30, 2014, the employer paid her \$100 and an additional \$150 on August 1, 2014. The week beginning July 28, 2014, she worked five days and did not receive any of the expected \$250 pay. The week beginning August 4, 2014, she worked three days and did not receive any of the expected \$150 in pay. She seeks the total of \$400 as due.

The employer denies the claimant was an employee, but argues she was a booth renter. She admits the claimant did not have a booth renter's license and that she provided the application to the claimant, along with the application fee, not payment of wages. Further she argues she told the claimant to come and get her stuff from the shop because she did not have a booth renter's license. She feels the claimant is blackmailing her for this money. She testified the claimant had had her New Hampshire license for less than one year.

She also argues the claimant provided pay stubs from JC Penney Salons which shows the claimant was working for that entity during the same time frame she is claiming from this employer.

FINDINGS OF FACT

The claimant interviewed with the employer on July 18, 2014. She began working for the employer on July 21, 2014. The claimant provided credible testimony that she worked five days during that week of July 21 through July 25, 2014; five days during the week of July 28 through August 1, 2014; and three days during the week of August 4 through August 6, 2014.

The claimant provided credible testimony that her pay arrangement was \$50 per day, scheduled at five days per week.

RSA 275:49 Notification, Posting, and Records. – Every employer shall:
I. Notify the employees, at the time of hiring of the rate of pay, and of the day and place of payment and Lab 803.03 Notification and Records.

(a) Every employer shall at the time of hiring and prior to any changes notify his/her employees in writing as to the rate of pay or salary, whether by day, week, biweekly, semi-monthly, or year, or commissions, as well as the day and place of payment and the specific methods used to determine wages due pursuant to RSA 275:49.

(f) Pursuant to RSA 279:27 and RSA 275:49, VI, relative to record keeping requirements, every employer shall:

(6) Maintain on file a signed copy of the written notifications provided to each employee as required by Lab 803.03 (a), (b) and (c) above.

The employer failed to notify the claimant, in writing, as to the rate of pay, and failed to maintain on file a signed copy of the notification.

The employer's argument that the claimant was to be a booth renter is not persuasive. She was aware the claimant did not possess and booth renter's license, as she provided the application. The claimant did not possess a booth renter's license at any time during her employment.

Her argument that the claimant had pay stubs covering the same pay week she began working for the employer is also not persuasive. Nothing prevents an employee from working for two employers. No documentation was presented to show the claimant worked the same days at both employers, to refute the claimant's testimony. The employer admitted she did not look closely at the pay stubs to see they covered a biweekly pay period.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she was an employee of the employer, not a booth renter, and is due the claimed wages.

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 proved by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$400.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$400.00, less any applicable taxes, within 20 days of the date of this Order.

/s/

Melissa J. Delorey
Hearing Officer

Date of Decision: October 24, 2014

MJD/slh