

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Counterpoint Financial Services LLC dba Pizzazz Tanning Hair & Nail Salon

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 279:21 VIII unpaid overtime wages

Employer: Counterpoint Financial Services dba LLC Pizazz Tanning Hair &
Nail Salon, 87 Elm St, Manchester NH 03101

Date of Hearing: November 24, 2014

Case No.: 49051

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$4,385.08 in unpaid minimum wage for hours worked between October 22, 2013 and September 22, 2014. She states that the employer did not track her hours. She began tracking her own time in June 2014 because she felt she should have been paid minimum wage for all hours worked.

She provided the employer with blocks of time that she was available to work. She seeks payment for minimum wage for this time.

The employer denies the claimant was not paid minimum wage for all time worked. The claimant was a full time student and they offered to work around her schedule. She provided blocks of time for which she was available. Her schedule was booked with as few free appointments so that when she was scheduled to be at the shop she was as busy as possible.

They tracked her time only through her booked appointments, as that was the only time she was required to be there. Often she would have her hair or nails done at the shop. She would also go home to wait for her next appointment as she lived nearby.

He further argued that she was paid more than minimum wage for all hours worked, showing tracked appointments "liberally" of four hundred sixty-two hours and \$4,725.42 in commission payments, yielding an hourly rate of \$10.22.

He also argued the claimant could not work the hours claimed as his manager, Ms. Howard is also a stylist and her work week is never greater than thirty-five hours.

FINDINGS OF FACT

The claimant worked for the employer as a commission only employee from October 22, 2013 through September 22, 2014.

The employer did not require the claimant to record her time worked as required by RSA 279:27, but did keep a schedule of client appointments.

The parties disagree as to the claimant's scheduled work time. The claimant provided hours of availability to the employer. The employer then provided a schedule based on clients booked. The employer's schedule did not use all of the available time provided by the claimant.

The employer provided credible testimony that the claimant was not scheduled to work during her entire blocks of available time. Her schedule was predicated on the clients booked and they scheduled her time with a few empty appointments as possible.

The claimant did not provide credible testimony or evidence to refute the credible testimony of the employer.

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she was worked the hours claimed and was not paid minimum wage for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden. The claimant, therefore, fails to prove by a preponderance of the evidence that she is owed the claimed wages.

DECISION

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, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: December 11, 2014

MJD/slh