

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

Seacoast Rejuvenation Center PLLC

DECISION OF THE HEARING OFFICER

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

Employer: Seacoast Rejuvenation Center, PLLC 114 Corporate Dr.,
Portsmouth, NH 03801

Date of Hearing: December 18, 2014

Case No.: 49157

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$2,000.00 for an unpaid bonus for year-end 2013. She states that she is entitled to the bonus pursuant to her offer letter. She had sales of approximately \$189,000, which should provide a year-end bonus of \$2,000 as her annual bookings generated greater than \$150,000 for the year.

The employer denies the claimant is due any further bonus. She argues that the claimant was grossly overpaid in her monthly bonuses, as she received, in error, 10% of bookings, rather than the stated 3% in the offer letter.

She was not aware that the offer letter contained the year-end bonus agreement. After reviewing the document, she agrees the bonus was due. However, she offset the bonus with part of the overpayment for December 2013 and issued the claimant's final check with an additional \$639.33 to satisfy the balance of the 2013 year-end bonus.

FINDINGS OF FACT

The claimant worked for the employer from January 19, 2013 through approximately April 26, 2014.

The employer provided the claimant with an offer letter which outlined:

- An hourly rate of pay of \$15;
- 10% commission paid on cross sales;
- 10% commission on product sales; \$10 credit voucher per hour worked, good toward product or services (not to be carried over year to year);
- Monthly bonus to be paid at the end of the month. If monthly bookings generate \$10,000 to \$14,999, bonus will be 2% of bookings. If monthly bookings generate \$15,000 or more, bonus will be 3% of bookings;
- Year End Bonus If annual bookings generate:
 - \$100 to \$109K- \$100
 - \$110 to \$119K - \$200
 - \$120 to \$129K - \$500
 - \$130 to \$139K - \$750
 - \$140 to \$149K - \$1000
 - \$150 or more - \$2000

The claimant signed the agreement on January 15, 2013. Both parties provided a copy of the agreement. The employer did not sign either copy of the agreement.

Both parties agreed the claimant earned the year-end bonus of \$2,000 based on sales of approximately \$189,000.

The employer provided credible testimony that she was not aware of the year-end bonus in the offer letter. After reviewing the offer letter, she determined the claimant had been overpaid in the monthly bonus, receiving a 10% commission, rather than the stated 3% in the offer letter. She calculated the claimant had been due \$5,670 for the monthly bonuses in 2013, but had actually been paid \$19,130.55, resulting in an overpayment of approximately \$11,000 over the monthly bonus at 3% and the year-end bonus of \$2,000.

The employer applied the December 2013 monthly bonus overpayment of \$1,360.67 to the outstanding 2013 year-end bonus of \$2,000, which left a balance of \$639.33. She paid the claimant the remaining \$639.33 with the adjusted commissions for an earlier pay period, for the two-week period ending May 11, 2014.

The claimant argued the monthly bonuses had been paid correctly throughout 2013. She further argued the \$639.33 received with her final paycheck was commissions, not part of her 2013 annual bonus.

The employer is precluded from using the accidental overpayment of the monthly commissions, paid at 10% rather than the 3% in the agreement, towards the payment of the claimant's year-end bonus. RSA 275:48 I (d) (4) allows an employer to recoup an accidental overpayment from an employee with the employee's authorization and a written agreement. No authorization or agreement exists.

Further, there simply is no statutory authority to award the employer an offset in the year-end bonus for overpayment of commissions the employer has already paid to the employee in 2013.

The Hearing Officer finds the claimant failed to prove the payment of \$639.33 was for commissions due, rather than a portion of the year-end balance. This amount is found to be payment for the 2013 year-end bonus rather than commission.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the remaining \$1,360.67 of the claimed 2013 year-end bonus.

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 a portion the claimed wages/bonus, it is hereby ruled that the Wage Claim is valid in the amount of \$1,360.67.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,360.67, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 5, 2015

MJD/kdc