

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



v

**SEISCO INTERNATIONAL LIMITED**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses  
RSA 275:42 I/II employer/employee relationship

**Employer:** Seisco International Limited, 241 West Airtex Rd., Houston, TX 77090

**Date of Hearing:** January 29, 2015

**Case No.** 49375

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on November 21, 2014. 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 the parties on December 30, 2014. The employer was granted a telephonic hearing. The claimant filed the Wage Claim for \$12,631.76 in wages and expenses.

The first issue raised by the employer was that there was no employer/employee relationship in this Wage Claim. The employer stated that the claimant was an Independent Contractor who submitted invoices for his work. The claimant was also responsible for his own scheduling and was working for another employer at the same time.

The employer said that the claimant came to the company as an Independent Contractor and agreed to work 10 days a month to help increase sales. The claimant had a high degree of expertise in the field. The wages were paid by invoice and the expenses were paid by submitted invoices. The claimant was asked to fill out a federal tax form but did not do so and so he received a Federal 1099 form as an Independent Contractor. The employment relationship ended when the claimant scheduled himself for a place where the employer did not want him to go and did not show up at a scheduled event in another state.

The claimant felt that he was an employee of the company in a salaried position. He worked for the company for five months and the relationship was terminated in June of 2014. The claimant testified that he felt he was going to be a full time employee in September of 2014. He said he did work for another company at the start of his employment with the employer in this Wage Claim.

The claimant did state that he scheduled some of his appointments and the employer scheduled some of them also. The claimant said that his agreement was to work 10 days a month but often ended up working almost every day of the month.

### **FINDINGS OF FACT**

RSA 275:42 I. The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person, except employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed.

This is the section of the law that determines the employer/employee relationship. When this is a challenged area, it must be ruled on because if there is no employer/employee relationship, the Wage Claim is not the proper forum to seek payment of debts due.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that there is no employer/employee relationship in this claim. Based on this ruling, the Wage Claim process is not the proper resolve to this claim.

RSA 275:42 II. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer

This section of the law is very specific about the criteria to be an employee. The testimony shows that the claimant was in business for himself and did not work exclusively for the employer and he submitted invoices for work performed and expenses incurred. In his

testimony, the claimant did say that he expected to become a full time employee in September but he was terminated prior to that happening.

The claimant scheduled much of his own work and the fact that he agreed to work only ten days a month shows that the job was of limited time. The ability to schedule appointments and direct staff was the issue that led to the severance of the relationship with the employer.

In considering the facts presented for the hearing, The Hearing Officer finds that the issue of the claimant going on the employer's health insurance was not a factor in the employer/employee relationship. The parties admit that there was an offer but there was no evidence that the plan was for full time employees only. The claimant did not participate in the plan.

The claimant also had some scheduling authority over employees of the company. The claimant was hired as a well credentialed person in the field. He was to increase sales and sale areas. In order to do this the claimant was given company resources including the use of Mr. Hudson, an employee of the employer. The employee was used in sales presentations by the claimant and had to approve the expenses submitted by the employee. The employer hired Mr. Hudson and continued to pay Mr. Hudson. The claimant used him to assist him in the total sales picture and did attest to the expenses charged to the company by the employee.

There was also terminology used by the employer citing that the claimant was working under an "employee agreement" with employee obligations. It is found by the Hearing Officer that this terminology was used to mean "employment" and not "employee".

There is no employer/employee relationship and so this is not the proper forum to adjudicate the claim for wages and expenses due and owing. The Wage Claim is denied.

### **DECISION AND ORDER**

This Department must first to determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is

registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: March 13, 2015

TFH/kdc