

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Cornerstone Periodontics & Implants LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Cornerstone Periodontics & Implants LLC 153 Manchester St,
Concord, NH 03301

Date of Hearing: February 9, 2015

Case No.: 49487

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$5,773.16 in unpaid wages for hours worked between June 2, 2014 and October 21 or 22, 2014. She argues that the new employer purchased the business and stated to her that “everything would stay the same.” She acknowledges they did not discuss her rate of pay, but she assumed it would stay the same because of his earlier statement.

She received her first paycheck on June 6 or 7, 2014. At that time, she realized her rate of pay had changed from \$40.53 to \$31.25.

She is seeking the difference between her prior rate of pay with the prior employer, of \$40.53 per hour, and the \$31.25 she received from the new employer, or \$9.28 per hour for all hours worked between June 2, 2014 and October 21 or 22, 2014.

The employer denies the claimant is due any wages. They argue the claimant’s employment ended with the prior employer and began with them. Any pay arrangement with the prior employer ended at that time. Further, her role with the new employer was substantially different than that of the former role.

The hearing was left open until 4:30pm on Friday, February 13, 2015, for the employer to submit time records for the period of June 2, 2014 through June 17, 2014, and any closing statement. The employer submitted the documentation within the required timeframe. The claimant’s response was due by March 5, 2015. She did not submit any documentation.

FINDINGS OF FACT

The claimant worked for this employer from June 2, 2014 through October 23, 2014. This employer had purchased the practice from the claimant's prior employer. With the prior employer, she earned a rate of \$40.53 per hour. The new employer changed her rate of pay to \$31.25, with no written notice to her at the time of hire.

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 failed to properly notice the claimant of her rate of pay at the time of hire.

However, the claimant did receive notice of the rate of pay on June 6 or June 7, 2014, when she received her first pay check with a pay stub detailing hours worked and her pay.

The employer's argument that the claimant was starting employment with a new employer with a substantially different role is valid. However, the employer failed to notify the claimant of her rate of pay, verbally or in writing, prior to her beginning work. The employer would be within their rights to change the rate of pay, they simply need to reduce the notice to writing and obtain the claimant's signature of acknowledgment, not agreement.

The employer's argument using three previous cases under this Department is not persuasive in whole. In both Simonds v Glen Builders Inc. case number 43273 and Conway v RPM Fuels LLC case number 42278, the claimant's had received verbal notice of their rate of pay prior to working at that rate. Smith v Bladecki Auto LLC case number 44127 presented a credibility issue of the actual verbal agreement between the parties.

Both parties to this claim agree the rate of pay for the claimant had not been specifically discussed prior to her first date of work, or June 2, 2014. The claimant took the employer's statement of "everything would stay the same" to include her rate of pay. The claimant had a verbal expectation from the new employer that the rate of pay would remain the same. The first notice, verbal or written, to the claimant regarding her rate of pay was via her pay stub, dated June 6, 2014, which she might not have seen until June 7, 2014.

The claimant worked between June 2, 2014 and June 7, 2014, believing her rate of pay remained at the \$40.53 she received from the prior employer. On at least June 7, 2014, the claimant realized her rate of pay had been changed to \$31.25.

The claimant worked the following hours prior to receiving notice of her rate of pay on June 7, 2014:

- June 2, 2014 8.58 hours
- June 3, 2014 7.92 hours

- June 4, 2014 7.97 hours
- June 5, 2014 8.03 hours

She worked a total of 32.5 hours and received an hourly rate of \$31.25.

The claimant received notice on June 7, 2014, that her rate of pay had been changed to \$31.25. At that point, she knew the rate at which she would be paid if she continued to work for the employer.

The employer's argument that the claimant had been overpaid by 3.5 hours for the pay period ending June 3, 2014, has no bearing on the claimed issue. If the employer had accidentally overpaid the claimant, their exclusive remedy is through RSA 275:48 I(d)(4). There is no statutory allowance for an offset for an accidental overpayment.

The Hearing Officer finds the claimant is due the difference between her prior rate of pay with the prior employer, of \$40.53 per hour, and the \$31.25 she received from the new employer, or \$9.28, for the 32.5 hours worked June 2, 2014 through June 5, 2014, or \$301.60 (\$9.28 * 32.5 hours).

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 of the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$301.60.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$301.60, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 16, 2015

MJD/slh