

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Advanced Pest Control Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/bonus
RSA 275:43 V unpaid vacation pay

Employer: Advanced Pest Control LLC, 728 E Industrial Dr Unit 17, Manchester, NH
03109

Date of Hearing: September 16, 2015

Case No.: 50363

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$4,500.00 in unpaid wages/bonus 1,800 jobs payable at \$2.50 per job. He also seeks \$720.00 for forty hours of vacation pay, payable at a rate of \$18.00 per hour. He received a payment of \$420, for a claimed balance of \$4,900.

At the hearing, the claimant agreed the balance due should be \$4,800, not \$4,900.

The employer denies the claimant is due any of the claimed wages. No vacation policy exists as the work has a busy summer season and a slower winter season. The employer did not offer a specific bonus program to the claimant. He occasionally paid a bonus for a job, but not under a bonus program.

FINDINGS OF FACT

The parties disagree as to whether a vacation or bonus policy existed, either verbally or in writing.

The claimant passionately tells a credible story. However, he fails to prove by a preponderance of the evidence, as required by law, that he was not paid all wages and vacation pay he claims are owed. The employer also tells a story that can be considered credible.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he was not paid the claimed bonus and

vacation pay. The Hearing Officer finds that the claimant failed to meet that burden of proof as his story is only as credible as, not more credible than, the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed the claimed bonus and vacation pay.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet his burden in this claim.

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 he is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: September 30, 2015

MJD/kdc