

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

JEREMIE STEFAN
dba STEFAN FAMILY PAVING

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wage

Employer: Jeremie Stefan dba Stefan Family Paving, 178 Towle Farm Rd,
Hampton, NH 03842

Date of Hearing: August 27, 2015

Case No. 50364

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 30, 2015. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on July 30, 2015. The employer did show up for the hearing.

The claimant testified that he applied for a position that was advertised on Craig's List. The claimant stated that he was hired at a rate of \$20.00 per hour to shovel snow off roofs. The claimant further testified that the employer's mother kept track of the time worked. He has never been paid anything in wages for work performed. There was no hiring agreement in writing and the claimant made multiple attempts to be paid for his time.

The claimant also testified that he is seeking expenses for the time he had to take to come to the hearing.

The employer testified that the condominium units that hired him to do the work never paid him for his services. The employer said that he was incarcerated by the State of New Hampshire and that he has no money to pay the Wage Claim.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as employee expenses into the category of wages when the expenses are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he did meet part of this burden.

The Wage Claim is invalid in the request for expenses to be paid. The law does not have any provision to pay for expenses incurred in the filing of a Wage Claim.

The request for \$680.00 in unpaid wages is valid. The claimant provided credible testimony that he was hired to do a job and he did that job. The claimant was also credible in his testimony that the employer kept track of the hours worked.

The employer uses the excuse that he was not paid for a job but does not take into consideration that an employee hires onto a job in good faith and expects to be paid for work

performed. The employer should have a plan to collect debts owed and should have a plan to pay those working for him.

The Wage Claim is valid in the amount of \$680.00.

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 Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$680.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$680.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: September 22, 2015
TFH/kdc