

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Symmetry Medical Manufacturing Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages
RSA 275:42 V, personally liability of corporate officer/manager

Employer: Symmetry Medical Manufacturing Inc, 253 Abby Rd, Manchester,
NH 03103

Date of Hearing: August 4, 2015

Case No.: 50588

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,460.88 in liquidated damages as the employer terminated his employment and paid his wages on the next regular payday, instead of within seventy-two hours. He also asserts that unnamed officers of the corporation should be held personally liable.

He alleges the employer was looking for any excuse to terminate his employment after he asked for reasonable accommodations for his disability on January 5, 2015. His text stating, "Then I guess today is my last day.. If I could I would .." referred to his last day to submit his weekly reporting, not his last day of employment.

The employer denies that they terminated the claimant. The employer received a text, documentation previously submitted, on April 17, 2015, stating, "Sherri got really sick last night.. Won't be in today". The employer responded, "I would suggest you make every effort to get in to work today. This is your second day out this week". The claimant texted, "Then I guess today is my last day.. If I could I would ..". The employer responded, "I accept your resignation".

Ms. McLaughlin did not offer any testimony.

The employer processed the claimant's statement as a resignation and paid his wages on the next regular payday. The claimant did contact the employer stating he did not mean to resign. The employer did not allow the claimant to retract his resignation.

FINDINGS OF FACT

The claimant contacted the employer on April 17, 2015 at 7:44am, via text, to state he would not be able to attend work due to an illness, "Sherri got really sick last night.. Won't be in today". The employer responded, "I would suggest you make every effort to get in to work today. This is your second day out this week". The claimant texted, "Then I guess today is my last day.. If I could I would ..". The employer responded, "I accept your resignation".

The claimant did not respond to the employer until the following morning at 8:01am when he stated, "Sherri, Getting sick is not a choice I have or had. I did not resign willfully . I had requested reasonable accommodation which I clearly stated in my response to the performance evaluation. You will hear from (the claimant added "my attorney" at the hearing as it was missing from the physical text messages)."

The claimant's argument that his text referencing his last day meant the last day he had to submit a report, is not persuasive.

The plain reading of the claimant's text "Then I guess today is my last day.. If I could I would .." indicates that the claimant is resigning his position with the employer. The claimant did not respond to the employer stating his disagreement with their acceptance of the resignation at the time, nor almost a day later when he sent the response of "Sherri, Getting sick is not a choice I have or had. I did not resign willfully . I had requested reasonable accommodation which I clearly stated in my response to the performance evaluation. You will hear from (the claimant added "my attorney" at the hearing as it was missing from the physical text messages)."

The employer processed the claimant's separation from employment as a resignation, based on the text messages. The employer did not allow the claimant to retract his resignation, though he did make the same argument at the time that he did not mean to resign with that text message.

The employer paid the claimant his full wages on the next regular payday, as required by RSA 275:44 II.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that employer did not pay wages within the prescribed timeframe.

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 RSA 275:44 requires an employer to pay final wages within a prescribed timeframe, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer did not pay wages within the required timeframe, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 27, 2015

MJD/kdc