

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



V

**David McCurdy dba Machine Tech Services**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/commissions  
RSA 275:44 IV liquidated damages  
RSA 279:21 minimum wage

**Employer:** David McCurdy dba Machine Tech Services, PO Box 6511,  
Manchester, NH 03108

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

**Case No.:** 50617

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$2,802.25 in unpaid wages as the draw against commission he received did not cover minimum wage for all hours worked.

David McCurdy denies that the claimant was an employee, but rather a partner in the business.

**FINDINGS OF FACT**

This Department must first to determine the claimant's status as a partner or an employee.

The parties began a working relationship in late 2012.

The claimant provided credible testimony that he did not complete any employee new hire paperwork such as an employment application or a W-4, nor did he receive a W-2 or 1099 for any monies paid by David McCurdy dba Machine Tech Services. He made a statement that he would need to figure out his taxes.

Both parties agree no formal partnership had been reduced to writing.

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 an employee of David McCurdy dba Machine Tech Services. 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 wages.

Even if the claimant had proven he had been an employee of David McCurdy dba Machine Tech Services, he would still retain the burden to prove he would have been due the claimed wages.

The claimant acknowledged that the claim for wages from November 2012 through February 2013 are a "guestimate". He did not punch a time clock. He did not keep records of the dates and times worked in any form either at the establishment or personally. He also only claimed wages for this time period, though he worked a far greater period of time.

Based on the testimony and evidence presented by the claimant, the Hearing Officer finds the claimant would not have met his burden to prove by a preponderance of the evidence he was due the claimed wages.

### **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 275:51 V affords the Wage Claim process to employees of employers only, it is hereby ruled that the Wage Claim is invalid due to a lack of jurisdiction by this Department.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: July 28, 2015

MJD/kdc