

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Alliance Holdings Inc aka Satellite Agency Network Group

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:37 equal pay

Employer: Alliance Holdings Inc, 234 Lafayette Rd, Hampton, NH 03842

Date of Hearing: September 30, 2015

Case No.: 50635

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is the victim of gender discrimination in contravention of RSA 275:37. He alleges he received \$3,000 less per year than two lesser experienced female counterparts doing essentially the same job. He acknowledges he received an increase in pay to bring his annual salary in line with the female co-workers, but the employer did not make up the difference from his time of hire.

The employer denies they participated in discrimination of any sort. The claimant did not have the same skills or experience as the two female workers. Further, the two female associates negotiated for their higher salaries as both of their commutes increased significantly.

FINDINGS OF FACT

Prior to the claimant's employment with the employer, he had thirty four years of experience in the insurance industry and had ended his career owning his own Allstate agency for fourteen years. He sold his agency in 2010.

Between 2010 and August 2013, he worked in jobs unrelated to insurance.

The claimant had allowed his insurance license to lapse after the sale of his business.

The claimant began working for the employer in August 2013 in personal insurance lines. The employer offered the claimant \$42,000 as an annual salary, which he accepted without negotiation. The claimant had reinstated his insurance license prior to beginning work with this employer.

In February 2015, the employer provided a merit increase to the claimant, raising his annual salary to \$46,000.

Around the same time the claimant had been hired, two female associates were also hired in personal insurance lines. Both female associates were offered positions with a \$42,000 annual salary. Both had a significant increase in their commute time from their previous position, and countered for a \$45,000 annual salary. The employer agreed as their range of payment for new associates in personal lines was \$42,000 to \$45,000.

The claimant worked in personal lines owing his Allstate agency. Allstate is a single line agency, meaning he only sold Allstate products. The new employer handles upwards of twenty different insurance carrier products.

Both of the female associates had backgrounds with independent insurance agencies, meaning they had experience with multiple insurance products and insurance carriers.

The claimant initially struggled with the various systems from the twenty odd different insurance carriers. He did over time increase in proficiency and merited an increase in salary to \$46,000 in February 2015.

The female associates did not receive merit increases at that time.

The claimant did inquire as to the discrepancy in salaries in January 2015, at which time the employer explained that the others had increased commutes and more experience with different insurance carriers and products.

The parties disagree that the issue of gender discrimination was raised by the claimant during that conversation. They further disagree that the merit increase was to bring the claimant's salary in line with the female associates and that the claimant asked for \$4,500 for the eighteen months of salary difference.

Pursuant to RSA 275:37, effective January 1, 2001 through December 31, 2014, no employer shall discriminate in the payment of wages as between the sexes, or shall pay any employee in his or her employ salary or wage rates less than the rates paid to employees of the opposite sex for equal work or work on the same operations. However, nothing in this subdivision shall prohibit a variation in rates of pay based upon a marked difference in seniority, experience, training, skill, ability, or difference in duties and services performed, either regularly or occasionally, or difference in the shift or time of the day worked, or difference in availability for other operation, or other reasonable differentiation except difference in sex. A variation in rates of pay as between the sexes is not prohibited where such variation is provided by contract between the employer and the recognized bargaining agent of the employees or, in case there is no such bargaining agent, where such variation is provided by written agreement or contract between the employer and not less than 5 of the employees.

and:

RSA 275:37 effective January 1, 2015, I. No employer or person seeking employees shall discriminate between employees on the basis of sex by paying

employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions, except where such payment is made pursuant to:

- (a) A seniority system;
- (b) A merit or performance-based system;
- (c) A system which measures earnings by quantity or quality of production;
- (d) Expertise;
- (e) Shift differentials;
- (f) A demonstrable factor other than sex, such as education, training, or experience.

II. An employer who is paying wages in violation of this section shall not reduce the wage rate of any other employee in order to comply with this section.

The claimant and two female associates had marked difference in experience with various insurance products and carriers. The claimant had been out of the insurance industry for three years and had allowed his license to lapse during that time. The female associates had negotiated for higher salaries based on commuting time.

The claimant failed to demonstrate that the employer paid him a lower salary than two of his female co-workers based on gender.

The Hearing Officer finds the claimant failed to prove the employer discriminated against him based on his gender by paying him less than two female associates.

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 275:37 prohibits an employer from discriminating between employees on the basis of sex by paying employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions, 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 the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 9, 2015
MJD/kdc