

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

American Red Cross

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions/bonus
RSA 275:43-b unpaid salary

Employer: American Red Cross, 28 Maitland St, Concord NH 03301

Date of Hearing: November 3, 2015

Case No.: 50819

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$9,898.79 in unpaid commission/wages for sales made prior to her termination of employment. She based this number on previous years sales.

The employer agreed the claimant was due an additional \$2,736.39, gross, in commissions, which they paid on July 24, 2015.

On August 10, 2015, the claimant amended her claim to include an additional \$2,100 in commissions/wages for blood drives she arranged.

The employer agreed there had been an issue with accounting for particular sales delivered through a third party vendor HSI. After a complete audit of the claimant's accounts, they produced a check in the amount of \$2,736.39, gross, on July 24, 2015.

FINDINGS OF FACT

The claimant worked for the employer from November 2008 through April 3, 2015. The parties disagree as to whether the claimant resigned or was terminated.

The claimant argues the employer failed to properly pay her commissions on classes sold and/or enrollment in those classes and for blood drives scheduled.

The employer credibly argues that only three blood drives organized by the claimant were ultimately held and she received payment. The remaining eighteen blood drives were not held, therefore, no incentive is due.

The claimant did not present any documentation to show the blood drives in question had been executed.

The July 28, 2014, email sent to the claimant regarding the incentive for blood drives clearly states, "As promised, we are launching an exciting new Biomed Incentive which will run now through December 31, 2014! Sale Reps who recruit blood drive sponsors will receive \$100 for each drive that is successfully executed."

Pursuant to RSA 275:49, the employer properly noticed the claimant regarding the incentive program, in that the blood drive must be executed in order to receive the \$100 incentive.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed incentive for the blood drives under the written policy of the employer.

The claimant further argues she is due commissions for classes she sold. Classes sold were administered through a third party (HSI) who did not properly invoice and credit her with the sales. She also did not receive final enrollment numbers for any of the HSI classes.

The claimant did not maintain any records of her own for any of the classes sold. She based her claim solely on historical figures from years past.

The employer provided documentation, previously submitted, to show they provided all the records they requested and received from HSI, showing sales made and commissions due to the claimant. This documentation resulted in the \$2,736.39 check which the Department received July 24, 2015, and forwarded to the claimant.

The employer credibly testified that they have paid all the commissions due. If anything further is due it is because HSI did not provide the documentation they requested.

The claimant did not provide any documentation to show she had not received payment for any particular class.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due any claimed wages/commissions/bonus.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her 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 her 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 she is owed the claimed wages/commissions/bonus, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: November 19, 2015

MJD/mjd