

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



V

**DOW FITNESS**  
**dba GOLD'S GYM**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 I unpaid commissions

**Employer:** Dow Fitness dba Gold's Gym, 522 Amherst St, Nashua, NH 03063

**Date of Hearing:** September 9, 2015

**Case No.** 50849

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on June 30, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on August 18, 2015.

The claimant testified that there was a wage plan in place but it was not in writing. The claimant testified that he worked from February of 2015 until June 19, 2015. He stated that he was an hourly employee at the rate of \$12.00 per hour and a commission of 10%. He was paid the commission after three days if the client did not cancel the membership. The claimant said that he was not paid any commission for March, April, May or June. He believes that he is owed \$700.00 in unpaid commissions.

The claimant did testify that he reported his time on the computer and he was paid some commissions but not near what he estimated was due to him. He also testified that there were no pay stubs to review and he could not find anything online.

The employer testified that the claimant held two different positions while he was employed. He started out as a Floor Trainer at the hourly rate of \$12.00. There was also a commission plan in place that was the prerogative of management and not a guaranteed commission.

On May, 1, 2015 until June 19, 2015 the claimant was hired into a position of Personal Trainer. In this position the claimant received \$12.00 for each one half hour of training and a commission of 5% if he signed the client up himself and 2.5% if the client was referred by another or by the gym.

The employer further testified that the claimant was advised by management several times about the wage structure and his obligation to follow the rules. Pay stubs were available for review online or in the club. The employer testified that the claimant said he did not want copies for review. The employer also pointed out that the wage plans were known to the claimant and signed off on by the claimant. The employer maintains that all wages due have been paid.

### **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. A commission is considered wages when the commission is 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 invalid. The claimant has the burden to show that there were wages due and owing and he did not meet this burden.

It became apparent during the hearing that the claimant was provided with all records and with the structured wage plans for the positions he held. The claimant did not seem to understand the actual plans. The employer provided credible testimony that they did have to address the plans several times with the claimant.

The employer was credible in the reporting of wages and how the commissions were earned. There was a record keeping process in place and the employer provided the records. The employer also stated that the claimant was terminated for cause at the end of his employment.

The Wage Claim is invalid.

### **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 Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: September 28, 2015

TFH/kdc