

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CPTe Health Group

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages
Interest

Employer: CPTe Health Group, 522 Amherst St, Nashua, NH 03063

Date of Hearing: October 7, 2015

Case No.: 51101

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserted, during the filing of his wage claim, that he was owed \$300.00 in unpaid wages for hours worked on June 26 and 27, 2015. He further seeks liquidated damages and interest.

The claimant notified the Department on October 1, 2015, that he received the payment of \$300.00 on July 29, 2015, but wanted to continue for liquidated damages and interest.

CPTe Health Group argues the claimant is not and has never been an employee of theirs. They were responsible for writing the checks for services rendered during the Granite State Games as part of their charitable contribution to the games. They received the sponsor contributions and cut the checks. They did provide one half of the payment for the Athletic Trainers, also part of their charitable contribution.

FINDINGS OF FACT

This Department must first determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The Hearing Officer finds that the claimant was not an employee of an employer, but an independent contractor, because the claimant met all the criteria in (a) through (g), by his own testimony and admission.

Because the claimant was an independent contractor, not an employee of an employer, this Department does not have jurisdiction over his claim. The claimant may have a cause of action in another legal venue.

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.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 9, 2015

MJD/kdc