

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Graham & Graham PC

DECISION OF THE HEARING OFFICER

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

Employer: Graham & Graham PC, PO Box 1661, 174 Court St, Laconia, NH 03247

Date of Hearing: October 12, 2015

Case No.: 51143

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$548.08 in unpaid salary as the employer terminated her employment halfway through the pay period and she received only one half of her regular salary. She also alleges she received only a prorated amount of a negotiated \$3,000 lump sum payment due after April 15, 2015.

The employer argues that he terminated the claimant for cause, and pursuant to RSA 275:43-b, can prorate her salary accordingly.

Further, the negotiated \$3,000 lump sum payment is a portion of her regular salary, and she received the prorated amount commensurate with the time she worked in 2015.

FINDINGS OF FACT

The claimant received a regular week salary of \$1,196.15, gross, based on a \$57,000 annual salary, and a \$3,000 lump sum wage payment after April 15 of each year, totaling \$60,000 in annual wages.

The claimant argues the employer failed to pay her full salary upon termination. She claims she was not dismissed for cause.

The claimant's argument that Lab 803.02 (d) No employer shall prorate a salary to a daily basis in accordance with RSA 275:43-b, I, (b) and the Fair Labor Standards Act for a disciplinary suspension unless the action is a direct result of a safety violation made by such employee as required in 29 U.S.C. sec. 201 et seq. of the Fair Labor Standards Act, does not allow the employer to prorate her salary is not persuasive or relevant.

Lab 803.02 (d) applies only to RSA 275:43-b I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

(b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.

The employer argues he terminated the claimant for cause for two reasons. First, because she threatened to file a complaint with the Department of Labor because she wanted additional money to which she was not entitled. Secondly, that she "did nothing" for forty hours per week for her last three weeks, in contravention of her written agreement, previously submitted, that states, in relevant part, "no one is allowed to be at an office without projects that further our firm wide goals for productivity, client work, CPE, planning for future engagements, etc." and "NOTE: once or more each day if the above is occurring you are required to discuss this situation with Jeff, and others in the firm, to plan for work reassignments or to offer assistance to others who have projects underway."

RSA 275:43-b II permits an employer to prorate salary to a daily basis when a salaried employee "is terminated for cause by the employer".

The current standard for a "for cause" termination is established by Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). The Decision sets the standard as, "articulated at 82 Am. Jur. 2D *Wrongful Discharge* § 183 (2003), which provides that an employer may dismiss an employee "for cause" if the employee engages in misconduct. An employee's misconduct must comprise reasonable grounds for termination, and the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination. 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003); see also *Lowell v U.S. Sav Bank*, 132 N.H. 719, 726 (1990) (an employer must offer an employee a proper reason for a "for cause" dismissal). In reviewing a "for cause" dismissal, "the fact finder must focus not on whether the employee actually committed misconduct, but rather on whether the employer reasonably determined it had cause to terminate." 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003)".

The claimant did not receive any notice, either express or implied, that her actions would be grounds for termination.

The Hearing Officer finds that the employer did not have reasonable grounds that they had cause to terminate the claimant when she failed to provide notice she did not have any work. The Hearing Officer, therefore, finds that the claimant proved by a preponderance of the evidence that she is owed the claimed salary in the amount of \$548.08.

The claimant argues she is due a \$1,196.15 for the balance of a \$3,000 lump sum payment of wages, not bonus. She argues she is due the full \$3,000 because she worked in 2015.

The employer argues the claimant received a prorated portion of the \$3,000 commensurate with the time she worked in 2015. A third party calculated this payment as to remove any bias on his part.

The claimant strongly asserts the \$3,000 payment is part of her annual salary, and not a bonus.

The claimant could not articulate the calendar year for which the \$3,000 completed the \$60,000 salary, \$57,000 of which she received on a weekly basis. She only stated the \$3,000 payment was paid after April 15 of each year.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed \$1,196.15 in unpaid wages.

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 met her burden in the claim for RSA 275:43-b unpaid salary. She did not meet this burden in the claim for RSA 275:43 unpaid wages.

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 that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$548.08.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$548.08, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 29, 2015
MJD/kdc