

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



V

**Tower Hill Sales Associates Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/commissions  
RSA 275:48 I illegal deductions

**Employer:** Tower Hill Sales Associates Inc, PO Box 457, Auburn, NH 03032

**Date of Hearing:** November 3, 2015

**Case No.:** 51344

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant originally asserted, through the filing of his wage claim, that he was owed \$17,400 in unpaid commissions, upon separation of employment. He then amended his claim to \$32,000 in unpaid commissions. At the hearing, he amended his claim again to \$40,451. He also, for the first time, alleged the employer made illegal deductions from his wages.

The employer agreed to waive the fourteen day notice period required by Lab 205.02, and hear the issue of RSA 275:48 I for illegal deductions.

He argues the employer improperly deducted \$4,476.58 from his wage for a loan and \$268.44 for the health insurance premium for December 2014.

The employer denies the claimant is due any further commission. The claimant received all commission due to date. A customer returned a large order for which they back charged the claimant's commission. He will continue to receive commissions on sales he made, however, there could still be offsets for returns of product.

They conceded he is due one month of medical as the insurance company erroneously terminated his insurance as of his termination date, rather than the end of the month. They used the credit for the health insurance towards his offset for the customer return.

**FINDINGS OF FACT**

The employer terminated the claimant's employment on December 3, 2014.

The employer has continued to make payments for commissions earned by the claimant. The commission payments ceased upon a \$10,823.43 chargeback from a return of FW Webb purchase of \$137,143.05, documentation previously submitted. They will continue to pay any commissions earned after any negative chargeback amounts have been reconciled.

The employer previously presented credible documentation to show their accounting of the commissions calculated and the claimant's loan history.

The claimant pointed out a few items he considered discrepancies with the documentation. It was also noted that the employer gave the claimant credit twice for the same commission on one occasion.

The claimant did not present any credible testimony or evidence to show that the documentation presented by the employer was incomplete or erroneous in the employer's favor.

The claimant amended his claim on two occasions. He did not provide any documentation regarding the additional amendments.

The employer presented credible testimony and evidence that the claimant had been credited with all commissions earned, but had a reconciliation for the FW Webb return, resulting in a large chargeback. The employer will continue to credit commissions earned to the claimant and will make any applicable payments after any negative balance (chargeback) reconciliations.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed commissions/wages.

The employer agreed to waive the fourteen day notice period required by Lab 205.02, and hear the issue of RSA 275:48 I for illegal deductions.

The claimant argued the employer deducted the premium for his health insurance in December 2014, when the carrier terminated his insurance as of December 3, 2014. The employer agreed they owed the claimant the health insurance premium because the carrier inadvertently canceled his insurance on his date of termination, rather than on December 31, 2014, as they were instructed. The employer used the \$268.44 health premium deduction as an offset towards the FW Webb commission chargeback.

RSA 275:48 Withholding of Wages I (b) allows an employer to make certain deductions from an employee's wages if they have first secured a written authorization by the employee for deductions, which for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner.

There is simply no statutory authority for the employer to use a return of premium, having been illegally deducted from the claimant's wages, as an offset against a negative commission chargeback.

The Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed illegal deduction in the amount of \$268.44.

The employer deducted \$4,476.58 from the claimant's final wages for a legitimate loan.

RSA 275:48 Withholding of Wages I (d) allows an employer to make certain deductions from an employee's wages under these conditions:

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

The employer failed to reduce the arrangement to writing.

Because the employer did not obtain the proper authorizations, in writing, as required by RSA 275:48 I (d), the employer is precluded from deducting any balance for a legitimate loan from the claimant's final wages.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of evidence he is due the claimed illegal deductions in the amount of \$4,476.58.

### **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 for the claim for commissions/wages. However, he did meet his burden in the claim for illegal deductions from his 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 he is owed the claimed commissions/wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:48 I allows an employer make deductions from wages due an employee with proper authorization, and as this Department finds that the employer failed to obtain the proper authorization for the deduction for his loan from his final wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$4,476.58.

As RSA 275:48 I allows an employer make deductions from wages due an employee with proper authorization, and as this Department finds that the employer made illegal deductions from the claimant's wages for health insurance for December 2014 as he did not receive the benefit of the insurance, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$268.44.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$4,745.02, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: November 18, 2015

MJD/mjd