

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Maynard & Paquette Engineering Associates LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:42 I/II employer/employee relationship

Employer: Maynard & Paquette Engineering Associates LLC, 23 E Pearl St, Nashua
NH 03060

Date of Hearing: December 14, 2015

Case No.: 51662

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts that he was an employee of the employer and that the employer failed to pay \$9,580 in wages between October 6, 2014 and May 7, 2015.

Maynard & Paquette Engineering Associates LLC denies the claimant was an employee.

FINDINGS OF FACT

This Department must first to 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.

It is noted that on its face, the appearance of this relationship is one of a prime contractor and subcontractor. The claimant meets all but one of the criteria under RSA 275:42 II to be exempt from the definition of employee. However, the claimant does not meet *all* of the criteria set forth in the statute to be exempted from the definition of employee under this jurisdiction.

The Hearing Officer finds that the claimant was an employee of an employer, not an independent contractor, because the claimant does not meet the criterion in (f). Both parties acknowledge the claimant was not responsible for the satisfactory completion of work, and he could not be held contractually responsible for failure to complete the work.

Maynard & Paquette Engineering Associates LLC (hereafter, "the employer") argues that the claimant was determined to be an independent contractor by New Hampshire Employment Security. RSA 282-A:180 states, "Decisions rendered under this chapter shall not be admissible in any court or in administrative or other proceedings, not under or pursuant to this chapter, for the purpose of barring such court or proceeding from making independent findings of fact and rulings of law under the doctrine of collateral estoppel". The decision of New Hampshire Employment Security, therefore, does not bar this Department from finding that the claimant was an employee of an employer.

The employer agreed the claimant worked the hours he is claiming, but the claimant has not been paid because the quality of his work was poor and had to be redone.

RSA 275:43 and RSA 275:48 do not allow for payments for wages to be withheld due to the quality of the work performed.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages in the amount of \$9,580.00.

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 met his burden in this claim.

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 proved by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$9,580.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$9,580.00, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: December 23, 2015

Original: Claimant
cc: Maynard & Paquette Engineering Associates LLC, 23 E Pearl St, Nashua
NH 03060

MJD/kdc