

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Computech Integrators Inc

DECISION OF THE HEARING OFFICER

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

Employer: Computech Integrators Inc, 754 Chestnut St, Manchester NH 03104

Date of Hearing: April 20, 2016

Case No.: 52320

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$936.49 in unpaid salary and unpaid employee expenses.

At the hearing, he amended his claim to \$936.49 in unpaid salary only as he previously received payment for the expenses. He argues he worked one day of the pay period, February 15, 2016, and the employer terminated his employment upon his arrival on February 16, 2016, and he received wages for only one day's work, or \$284.67. He seeks the balance of his weekly salary as due.

The employer denies the claimant is due any further wages. They terminated his employment for poor performance after just one day and paid him for that day only. They further argue the claimant misrepresented his skill set and was not qualified to be a salaried professional.

FINDINGS OF FACT

The claimant began working for the employer on February 15, 2016, and the employer terminated his employment upon arrival at work on February 16, 2016. He was hired at a weekly salaried rate of \$1,221.16. The employer paid the claimant \$284.67, gross, upon his separation. At the claimant's request, the employer processed the wages as a contractor rather than an employee and the claimant will receive a 1099 tax form for those wages.

The claimant argues he is due the balance of the weekly salary, or \$936.49.

The employer argues they have paid all the wages the claimant is due as they terminated him for poor performance, after arriving almost forty minutes late for work on February 16, 2016.

RSA 275:43-b requires that an employer pay a salaried employee their full salary for any pay period in which the employee performs any work. It also allows employers to make deductions to a salaried employee's wages under certain circumstances, but none of those exceptions apply to the facts of this case.

The employer cannot prorate the claimant's salary upon termination "for cause" as the facts do not meet the criteria set forth in 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 employer's arguments that the claimant misrepresented his skill set, poorly performed, and asked to be paid as a contractor, are not found to be persuasive.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed unpaid salary/wages in the amount of \$936.49.

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 salary/wages, it is hereby ruled that the Wage Claim is valid in the amount of \$936.49.

The employer is hereby ordered to send a check to this Department, payable to John Valvanis, in the total of \$936.49, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 22, 2016

Original: Claimant
cc: Employer

MJD/aph