

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Robert Harrington, individually

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 275:44 IV liquidated damages
RSA 279:21 VIII unpaid overtime pay
RSA 275:42 V, personally liability of corporate officer/manager

Employer: Robert Harrington, individually, PO Box 311, Walpole NH 03608

Date of Hearing: May 24, 2016

Case No.: 52597

BACKGROUND AND STATEMENT OF THE ISSUES

This hearing was consolidated with four other claim hearings for the claimant with the employer and officers which he has filed against individually. Separate decisions have been issued for these hearings.

The claimant originally asserted, through the filing of his wage claim, that he was owed \$165,000.00 in unpaid salary per his contract, unpaid overtime hours, sought to hold the employer liable for liquidated damages, and asserted that the officers and board of director members are liable as the employer.

At the hearing, he clarified he is seeking \$97,764.24 in unpaid salary per his contract, unpaid overtime hours, seeks to hold the employer liable for liquidated damages, and asserts that the officers and board of director members are liable as the employer.

Mr. Harrington represented he is the Vice President of the non-profit corporation Hooper Golf Club of Walpole. The last filing on the Secretary of State's website dated January 27, 2011, shows Mr. Harrington as holding the position of Board of Director member, not Vice-President.

Mr. Harrington did not provide any testimony.

Hooper Golf Club of Walpole argues the claimant was a salaried employee therefore no hourly wages or overtime pay is due. Hooper Golf Club of Walpole is committed to paying the claimant last six checks pursuant to his 2015-2016 contract, totaling \$5,884.62, as soon as they

can liquidate assets to generate enough income to cover the amount. Hooper Golf Club of Walpole notified the claimant payments under his contract were ceasing as of December 2, 2015, as they did not have the funds to cover the payments. They turned the keys to the golf course back to the town as they owed back property taxes and lease payments to the town.

FINDINGS OF FACT

The claimant worked for the employer as the Golf Pro from 2011 through November 2015 on a salaried basis. Simultaneously, the claimant ran the Golf Pro Shop as his own independent business for which he received all the profits. Hooper Golf Club of Walpole did not charge rent for the claimant's use of the employer's space for the Golf Pro Shop.

The claimant and Hooper Golf Club of Walpole executed employment agreements for the 2013-2014, 2014-2015 and 2015-2016 seasons, previously submitted.

The claimant argues he did not receive minimum wage and overtime pay for all hours worked for the last three years. He argues he worked the following hours for each of the last three seasons for 2013, 2014 and 2015:

- April 80 hours per week
- May through August 98 hours per week
- September 80 hours per week
- October 70 hours per week
- November 55 hours per week until approximately Veteran's Day

He estimated he worked four weeks per month, seven days per week.

The claimant did not keep any contemporaneous records of his hours worked. He also admitted he is unable to distinguish the hours worked for Hooper Golf Club of Walpole from the hours worked in his own business, the Golf Pro Shop. Some of the work performed for either Hooper Golf Club of Walpole or his own business did provide benefit to the other entity.

The claimant also received all of the proceeds from any tournaments held at the Hooper Golf Club of Walpole's location. He did not know the value of the funds he had received during his employment. He used some of the proceeds as prizes for the tournaments in the form of gift certificates to his Golf Pro Shop.

Hooper Golf Club of Walpole argues the claimant was a salaried employee and therefore, not due any hourly or overtime payments. Hooper Golf Club of Walpole concedes they owe the claimant the last six checks pursuant to his 2015-2016 contract, totaling \$5,884.62. Hooper Golf Club of Walpole has not had and does not currently have the funds to pay the claimant, however, they will pay him as soon as they can liquidate enough assets to generate the income needed to cover the amount.

Though the claimant tells a passionate story of the hours worked during his employment, the Hearing Officer does not find his testimony persuasive. The claimant did not keep any records of hours worked. His recollection that he worked the exact same hours each month for the last three years is not persuasive. The claimant also could not distinguish the hours he worked for his own business from those he worked for Hooper Golf Club of Walpole.

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he was not paid minimum wage, overtime pay, or for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed the claimed minimum wage, overtime pay, or wages.

He further argues that he is owed six remaining checks under the 2015-2016 contract, totaling \$5,884.62, and an equal amount in liquidated damages. He finished work in November 2015 but did not receive the six remaining checks due after December 2, 2015, to complete the contract.

RSA 275:51 V allows for a wage claim (emphasis added) to be filed by an employee or by the department on its own motion no later than 36 months from the date the wages were due.

RSA 275:42 III defines the term "wages" as compensation, including hourly health and welfare, and pension fund contributions required pursuant to a health and welfare trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of an employee and agreed to by his employer, for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

The claimant did not perform any labor or render any services after November 2015. He last received a check on December 2, 2015. As such, any payment per the contract would not fall under the definition of wages, even though the employer has agreed they will make these payments when the funds become available.

Therefore, the Hearing Officer finds the claimant failed to prove he is owed the claimed wages/salary as he performed no work during the claimed pay periods and any contractual payments are not considered wages.

Because no wages are found to be owed, no liquidated damages can be awarded and Robert Harrington cannot be held personally liable.

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 in this claim.

DECISION

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 wages/minimum wage/overtime pay/salary, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 17, 2016

Original: Claimant
cc: Attorney
Employer

MJD/aph