

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

HOME DEPOT THD

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid bonus/commission

Employer: Home Depot THD, 2455 Paces Ferry Road, Atlanta, GA 30339

Date of Hearing: June 29, 2016

Case No.: 52802

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on May 4, 2016. The notice was sent to the employer and there was no written response or objection to the Wage Claim. The Notice of Hearing was sent to both parties on June 9, 2016. The employer was represented at the hearing.

The claimant testified that he worked for the employer for about one year and seven months. He held the position of Sales Manager for a chain of stores. He has filed the Wage Claim for the amount of \$3,077.60 which is the amount of his bonus payments for the months of February and March 2016. The bonus was paid monthly after the employer calculated all the factors going into the bonus.

The claimant believes that the months in question were worked and that his resignation did not occur until after the entire March period had ended. The claimant did testify that the employer did not pay the bonus if the employee resigned without completing the month associated with the period for the calculations. The claimant did testify that he resigned after the March calculating period.

The employer testified that the February bonus period was not paid until April 1, 2016 and that the March bonus period was paid on either April 29, 2016 or May 6, 2016. Because the claimant resigned on March 28, 2016 he was not entitled to the bonus earned for February or for March. The employer said that this was company policy.

The employer did not provide any written documentation to show that this payment practice was written policy.

The claimant believes that the bonus was earned for each month after having worked the entire reporting period. The claimant testified that the date of the payment was at the whim of the employer, but that the payment itself was predicated upon the work performed during the period.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

This part of the law also includes bonus and commission payments and makes them wages when they are due and owing.

It is the finding of the Hearing Officer, based on the written submission and the testimony of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant was credible in his testimony that he was on a monthly bonus plan that was in writing. The period of time was designated and when completed the figures were worked out by the employer and paid when completed. The claimant was not paid for the reporting period of February and March. He worked the complete two working periods. The claimant resigned when another reporting period began and did not expect to be paid or have a proration of earning for the new starting period.

The employer clearly stated that the time periods were worked but they have not finished the calculations needed for the bonus payment. The employer said this was the policy but did not provide any written documents that stated the bonus was forfeited if the employee resigned before payment after having worked the designated time period.

The Wage Claim is valid because the bonus is considered wages and was earned. The claimant had no control over when the bonus was paid because that function was done by management. The wages were earned in the designated time periods and were not paid. The Wage Claim is valid in the claimed amount of \$3,077.60.

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 Hearing Officer finds that the claimant

proved by a preponderance of the evidence that he was not paid all wages due; it is hereby ruled that the Wage Claim is valid in the amount of \$3,077.60.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$3,077.60, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: July 14, 2016

Original: Claimant
cc: Employer

TFH/aph