

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



**V**

**EYE ASSOCIATES OF NORTHERN NEW ENGLAND**

**DECISION OF THE HEARING OFFICER**

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

**Employer:** Eye Associates of NE, 1290 Hospital Drive, St. Johnsbury, VT 05819

**Date of Hearing:** July 28, 2016

**Case No.:** 53014

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on June 8, 2016. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on July 8, 2016.

The claimant testified that she worked for the employer from November of 2015 until March of 2016. The claimant further testified that she became eligible for benefits in February of 2016. One of the benefits was a \$1,000.00 package of eye products for every employee to be used for the purchase of various eye glasses or the like.

The claimant further testified that she did receive a booklet and a dictionary to help her attain a level of certification that was necessary to do certain jobs. The claimant did testify that she signed a contract for participation in the certification class. Part of the contract was for the employer to recoup any expenses needed for the completion of the course/certification if the employee did not complete the course or left the employ of the employer before attaining certification.

The claimant also testified that there was an employee benefit that she participated in and it was for eyeglasses provided by the employer. The claimant said that she became eligible for this program and was never told that it was an accrual program that allowed the employee to earn and spend so much a month.

The claimant testified that when she received her last check there were no wages with the check because the cost of the training program and the eyeglass benefit were deducted from the wages with a balance being due to the employer. The claimant testified that she left her classroom booklet in her locker at work and was billed for it because it was a part of the training program leading to a certification.

The employer testified that the claimant had signed for the provisions of the certification program. The handbook had a price tag of \$120.00 and could be only used by the claimant. Because the claimant left the employ of the company before completing the program, the deal was that all expenses could be recovered by the employer from the final pay check.

The employer further testified that the benefit package was accrued over the course of the year and the claimant used more than her accrual amount so they also took the overage out of the last pay check. The employer stated that the claimant earned \$145.22 in a benefit accrual and spent \$663.00 in products from the employer.

The employer maintains that the claimant's last pay check was for \$528.57 and there was \$637.78 in educational and employee benefits used so the claimant still owes the employer \$109.21.

### **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.

RSA 275:48 I No employer may withhold or divert any portion of an employee's wages unless:

- (a) The employer is required or empowered to do so by state or federal law, including payroll taxes.
- (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner

This part of the law spells out when and how deductions can be made from wages.

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

The employer prevails in the issue of the certification booklet. It is clear to the Hearing Officer that the claimant was enrolled in a program and that she signed off on the provisions of the program completion. The claimant did agree that if she left the employ of the company after

having signed up for the program, having the employer expend funds on the employee's behalf and then leaving employment prior to finishing the certification program, the employee would pay back the costs expended. In this case it was \$120.00 for the educational booklet.

The claimant prevails in the issue of employee benefits. It is clear that the employee was given an amount of money to buy products from the company. The claimant did not use the funds until after her probationary period was completed. There was no evidence presented to show that the benefit was to be accrued over time. It is apparent that the claimant was allowed to obtain products from the total benefit package. It is not clear that these products' cost had to be paid back if the accrual was not reached. The claimant did not agree to this practice and so the wages cannot be deducted to pay any excess cost.

The claimant did not use the entire benefit for herself. The employer allowed the purchase of the products.

The Wage Claim is valid in the amount of \$408.57 which is arrived at by deducting the cost of the Ophthalmic Medical Assisting Textbook from the last wages. This deduction was agreed to by the claimant.

### **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 she was not paid all wages due; it is hereby ruled that the Wage Claim is valid in the amount of \$408.57.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$408.57, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: August 22, 2016

Original: Claimant  
cc: Employer

TFH/aph