

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



**V**

**PC CONNECTION**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/commissions  
**Employer:** PC Connection, 730 Milford Rd, Merrimack, NH 03054  
**Date of Hearing:** September 8, 2016  
**Case No.:** 53126

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on June 21, 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 August 16, 2016.

The claimant testified that she worked for the employer for almost seven years. The claimant said that her last day of work was May 10, 2016. The Wage Claim was filed for an account that she worked on, and was settled, while she was still an employee. The claimant testified that the account closed on April 6, 2016, and commissions were paid in the next pay period.

The claimant further testified that this account, in question, was no different from other accounts she had worked on during her employment. Part of her wage program included commissions and she feels that this commission is due to her. The claimant testified that the Wage Claim was for \$4,110.09.

The employer testified that the sale, in question, should have never been assigned to the claimant or claimed by the claimant. When the facts of the potential sale came out to the employer it was learned that the process should have been assigned to a different part of the company.

On May 25, 2016, Microsoft took the sale away from the employer because of the nature of the sale. The employer testified that one employee, who took over for the claimant, had been paid some commission on this sale. Because of the fact that it was assigned in the wrong division of the company, and because the project was taken over by Microsoft, the employer testified that they were in the process of taking back any commission wrongly paid to the other

employee. This is a standard practice in the business and the claimant would never have received a commission on this sale.

### **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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

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.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The employer provided credible testimony that the questioned sale should never have been given to the claimant because it should have gone to their "global division". The employer was also credible in their testimony that after the claimant left the employ of the company, another Account Manager took over and did receive some commission on this sale. The employer also testified that when it was learned that the sale was assigned to the wrong part of the company and when Microsoft took over the entire account, the employer began the process of taking back the commission that was paid to the other Account Manager. The employer explained that this is a common practice, in the industry, when something like this occurs.

The claimant said that she would never have worked on the project if she did not intend to be commissioned on it. However, the claimant did not address the project being taken over by Microsoft and the fact that all paid commission was to be returned.

The Hearing Officer finds that the employer prevails in their testimony and the Wage Claim is invalid.

**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 the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: October 5, 2016  
Original: Claimant  
cc: Employer

TFH/das