

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Trisome Foods Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:42 I/II employer/employee relationship
RSA 275:43 I unpaid wages
RSA 275:48 I/II illegal deduction

Employer: Trisome Foods Inc., 123 Water St, Exeter, NH 03833

Date of Hearing: October 5, 2016

Case No.: 53472

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$900 in illegal deductions the employer deducted from her final wages. She had borrowed \$1,500 from the employer and had a balance of \$900 on the account when the employer terminated her employment. She seeks this amount as due.

Trisome Foods Inc. argues the claimant was not an employee, but an independent contractor. Therefore, they can make deductions from payments.

FINDINGS OF FACT

This Department must first to determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the

employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

It is noted that on its face, the appearance of this relationship is one of a prime contractor and subcontractor. The claimant meets all but one of the criteria under RSA 275:42 II to be exempt from the definition of employee. However, the claimant does not meet *all* of the criteria set forth in the statute to be exempted from the definition of employee under this jurisdiction.

The Hearing Officer finds that the claimant was an employee of an employer, not an independent contractor, because the claimant does not meet the criterion in (f). Both parties acknowledge the claimant was not responsible for the satisfactory completion of work, and she could not be held contractually responsible for failure to complete the work.

The claimant argues the employer illegally deducted the balance of a legitimate loan from her final wages.

RSA 275:48 Withholding of Wages I (b) Allows an employer to make certain deductions from an employee's wages if they have first secured a written authorization by the employee for deductions, which for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, specifically, legitimate loans:

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

The employer did not have a specific agreement regarding whether they could deduct any outstanding balance of the loan from the claimant's final wages, as required by RSA 275:48 I (d)(3)(C), in order to make a deduction from her final wages.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due the claimed illegal deductions in the amount of \$900.00

DISCUSSION

The burden of proof lies with the claimant in these matters. The claimant has the burden to prove by a preponderance of the evidence that she is an employee and that the claimed wages are due. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant met this burden.

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 she is owed the claimed illegal deductions, it is hereby ruled that the Wage Claim is valid in the amount of \$900.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$900, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: October 18, 2016

Original: Claimant
cc: Employer

MJD/das