

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

CONWAY HOTEL OPERATOR, INC.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:48 II employer liability for lost medical benefits

Employer: Conway Hotel Operator, Inc., PO Box 3367, N. Conway, NH 03860

Date of Hearing: October 17, 2016

Case No.: 53642

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 11, 2016. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on September 21, 2016. The employer did show up for the hearing.

The claimant testified that she worked for the employer for sixteen years. She was employed as a Front Desk Manager and a Sales Manager. The claimant did testify that she held this position under several different ownership groups.

The claimant said that she left her job on September 18, 2015. Upon separation from employment, the claimant received a notice from the employer that her medical insurance was covered through October 2015.

The claimant said that she had several different medical tests done prior to the end of October when the insurance was to terminate. The total of the medical bills came to \$1,975.95. After receiving the bills the insurance carrier denied the expense because the insurance had run out.

The claimant testified that she made several calls to the employer and they also looked into the coverage. It was the employer who wrote that the coverage was in place until the end of October.

The employer testified that the company pays for the insurance through the end of the month. The employee is responsible for a payment of \$116.76 per week as the employee's share of the coverage. In mid-October the claimant was notified that she still had to pay her

premium for the coverage. The insurance carrier said that the coverage had been terminated because of the non-payment of the premium.

The employer testified that the claimant owed five weeks of the premium to ensure the coverage was through the end of October. The employer also testified that their computer system failed and they lost all correspondence during this period of time, including any correspondence, with the claimant, over the insurance coverage.

FINDINGS OF FACT

RSA 275:48 II:

If an employer making a deduction of an employee's wages under paragraph I fails to make any payment relative to such deduction on the employee's behalf, and such employee loses any benefit or fails to meet an obligation caused by such failure, the employer shall be liable for such lost benefit or failed obligation. For any benefits provided to an employee paid for entirely by the employer without employee deductions, if the employer fails to make timely payments for such benefits and the employee loses any benefit or fails to meet any obligations caused by such failure, then the employer shall be liable for such lost benefits or failed obligations. The employer shall also be liable for any cost incurred by the employee caused by the employer's failure to make such payments.

This is the section of the law that holds an employer responsible for employee costs where the employee believed he/she was paying for the coverage.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties that there is a valid Wage Claim. The claimant has the burden to show that there is a valid claim and she met this burden.

The claimant left the employ of the company and received a notification that she was covered by her insurance through the end of October, 2015. The claimant had multiple medical tests done while the coverage was in place. When she was billed for the procedures she learned that she was not covered by her insurance and that it had been cancelled.

The claimant testified credibly that she made multiple attempts to contact the employer about this situation. She has a notice that it was being looked into and that in the opinion of the employer she was covered through the end of October.

Unfortunately the employer has lost all records of contact back to the claimant.

The employer testified that there was co-pay for the coverage and the claimant never paid the co-pay after she left the employ of the company. The claimant said that this issue was part of her series of questions to the employer.

It is the finding of the Hearing Officer that there is some culpability on both parties for the issue in question. The claimant knew that she had a co-pay because she had been paying it during her employment.

The employer provided the information that the claimant was covered through October. There is no record of any response to the claimant about the payment of her co-pay or to answer questions the claimant had on the coverage.

The claimant, in good faith, had medical tests done before the coverage expired. Because she did this she to protect herself from additional costs she relied on the information, provided in writing and given to her by the employer.

The Wage Claim was filed for \$1,975.95. Of this amount, the claimant owes \$583.80 which is reflective of the five weeks of co-payments. Therefore the employer is responsible for \$1,392.15 for costs placed on the claimant because of false information from the employer.

The Wage Claim is valid in the amount of \$1,392.15 which can be paid to the medical facilities for services rendered or to the claimant for the payment of bills she received because of the non-coverage.

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 \$1,392.15 for expenses due.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,392.15, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 27, 2016
Original: Claimant
cc: Employer
TFH/das