

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

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NGS Dental PLLC and Natalia Streltsov, DMD

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and bonus
RSA 275:44 IV liquidated damages

Employer: Intelitek, Inc, 18 Tsienneto Rd, Derry, NH 03038

Date of Hearing: January 9, 2017

Case No.: 53687

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$25,000.00 in unpaid bonus for 2014 and 2015. She amended her claim to include \$2,884.00 for two weeks of wages for work performed after her separation from employment. She further seeks liquidated damages.

The employer denies the claimant was not paid for all time worked. They have no record of her performing any work after her date of separation of employment.

They further argue the claimant is not due any bonus pursuant to the written bonus agreement.

FINDINGS OF FACT

The claimant worked for the employer from May 5, 2014 through April 15, 2016, when she resigned.

The claimant argues she is due \$10,000 in prorated bonus for the first year of her employment and \$15,000 in unpaid bonus for the full year of 2015. She argues other employees received bonuses.

The employer argues that the bonus is not only based on factors of individual and company performance, but is discretionary.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including bonus, at the time of hire and II upon any changes. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and (c)

prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly noticed the claimant of the written bonus policy.

The written offer letter dated April 14, 2014, reads, in relevant part, “you will be entitled to receive from the Company, an annual performance based, bonus of up to \$15,000, subject to customary deductions and withholdings, based on a full calendar year (i.e. January 1 through December 31). Since this year is not a full calendar year, any bonus you are awarded will be calculated on a pro rata basis. You must be employed at the time the bonuses are paid to be eligible for any such bonus. The bonus shall be based on attainable qualitative objectives to be defined by the VP and the CEO, discussed with and agreed by you. Such objectives shall be tied to your individual performance and RoboGroup T.E.K. Ltd’s, (the “Parent Company”) and/or Company’s performance.....The VP and the CEO shall determine if your objectives have been achieved in accordance with the Intelitek Remuneration Policy and accordingly the amount of your bonus, if any, will be determined.”

The policy does outline that individual and company goals exist for bonus determination. However, regardless of the performance of either the individual or the company, the plain reading of the policy states the claimant is entitled to receive a bonus “of up to \$15,000.” Further, the policy notices the claimant that the “amount of your bonus, if any, will be determined.” The policy does not guarantee any bonus will be paid to the claimant, regardless of performance.

The claimant’s argument that other employee’s received bonus payments is not persuasive or relevant.

The Hearing Officer finds the claimant failed to prove she is due the claimed bonus under the written policy of the employer.

The claimant argues she agreed to complete a class for the employer, which continued for two week after her employment terminated on April 15, 2016, and the employer failed to pay wages for this time.

The employer argues they have no record or knowledge of the claimant working after her separation date.

The claimant did provide a spreadsheet outlining the projects she had ongoing to the employer just prior to her separation of employment. She outlined that she would finish the remaining two weeks of an eight week class for a client, following her date of separation. She argues the employer agreed she could and should complete this class.

The claimant could not provide any documentation to show she completed the class for the client after her date of separation. She did not have any documentation to show she performed any work after her separation, nor to show she communicated to her employer that she was working or that the class had been completed.

The employer provided credible testimony that they had no knowledge that she performed work or even that the class in question had been completed.

The Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages.

Because no wages are found to be owed, no liquidated damages can be awarded.

However, even if wages had been found to be due, the claimant would have failed to prove by a preponderance of the evidence that liquidated damages were due.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The employer provided credible testimony that he does not believe the claimant is due any wages or bonus.

The Hearing Officer would have found that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good case failed to pay her all wages due in the time required because the employer had a genuine belief that the wages and bonus were not owed.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, including bonus, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages/bonus, it is hereby ruled that this part of the Wage Claim is invalid.

As RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that this part of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 25, 2017

Original: Claimant
cc: Employer

MJD/das