

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Maxim Healthcare Services

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses

Employer: Maxim Healthcare Services, 7227 Lee Deforest Dr, Columbia, MD 21046

Date of Hearing: February 21, 2017

Case No.: 54380

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed approximately \$700.00 in unpaid bonus from the third quarter of 2016 and \$75.00 in unpaid employee expenses for a cell phone bill.

At the hearing, the claimant agreed she had received the \$75.00 payment for the cell phone bill and removed this from the claim.

The employer denies the claimant is due any bonus under the written policy.

FINDINGS OF FACT

The claimant worked for the employer until her retirement on September 30, 2016.

The claimant argues she is entitled to the third quarter bonus for the period ending September 30, 2016. She specifically inquired with Ms. Mitchell as to whether she would receive the bonus payment and was told yes. She further argues she was there during the entire quarter and she had her annual evaluation, which should qualify her for the bonus.

The employer argues they properly noticed the claimant as to the bonus policy as acknowledged by her electronic agreement on April 14, 2014, Employee Handbook Acknowledgement.

The bonus policy reads, in relevant part, "Upon separation, all future bonus payments are forfeited, unless otherwise prohibited by applicable law. If employment is separated prior to the end of the performance and evaluation period, the separated employee is not eligible for a discretionary performance bonus because bonuses are not determined or earned until the end of the performance and performance evaluation period."

The employer argues that the claimant forfeited the bonus based on the written policy. Further, the bonus payments were made on November 4, 2016, well after the claimant separated employment. The employer also expressed confusion as to why the claimant would inquire about any bonus payment with Ms. Mitchell, when Ms. Clifford was her supervisor.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including bonuses, at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay, including bonuses, at the time of hire and 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 as to the written policy regarding the bonus plan.

The written policy specifically noticed the claimant that she would forfeit all future bonus payments. Her argument that the November 4, 2016, was not a future bonus payment is not persuasive, as she terminated her own employment on September 30, 2016, therefore the bonus payment had not yet been paid.

Further, the written policy clearly states that in order to be eligible for a bonus payment she must remain employed through the performance and performance evaluation period. She argues she was employed during her annual performance. Pursuant to the employer's credible testimony, an employee's annual review is not found to be the same as the performance evaluation period for a bonus payment.

The policy also notices the claimant that any bonus payment is discretionary.

The claimant did inquire with Ms. Mitchell regarding her bonus payment, and was erroneously told she would receive the payment. Ms. Mitchell was not the claimant's supervisor, she is not a member of the Human Resources staff, nor an employee with the authority to change company policy.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed bonus under the written policy of the employer.

DECISION

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 failed to prove by a preponderance of the evidence that she is owed the claimed bonus/wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 8, 2017

Original: Claimant
cc: Employer

MJD/das