

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

Live Wire Structured Wiring & Electric LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:42 I employer/employee relationship

Employer: Live Wire Structured Wiring & Electric LLC, 142 Shadow Lake Rd, Salem, NH
03079

Date of Hearing: April 12, 2017

Case No.: 54844

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$600 in unpaid wages for hours worked between January 16 and 26, 2017.

Live Wire Structured Wiring & Electric LLC denies the claimant is an employee. However, he is agreeable to paying the monies claimed, as soon as the claimant produces the necessary documentation to show he is an independent contractor.

FINDINGS OF FACT

The claimant worked for Live Wire Structured Wiring & Electric LLC in 2016 and then again between January 16 and 26, 2017.

Live Wire Structured Wiring & Electric LLC is agreeable to paying the \$600 claimed for work performed between January 16 and 26, 2017, as soon as the claimant produces the necessary documentation to show he is an independent contractor.

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.

The Hearing Officer finds that the claimant was an employee of an employer, not an independent contractor, because the claimant does not meet the criteria in (e), or (f). The claimant testified credibly that he did not hold himself out to be in business for himself and did not have any recurring business liabilities or obligations, nor did he register with the state as a business. The claimant was not responsible for the satisfactory completion of work, and he could not be held contractually responsible for failure to complete the work.

As the claimant is an employee of Live Wire Structured Wiring & Electric LLC (hereafter "the employer"), the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed \$600.

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 he is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$600.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$600, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 13, 2017

Original: Claimant
cc: Employer
MJD/das