

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

V

HD Supply Waterworks LTD

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages and commissions
RSA 275:43-b unpaid salary

Employer: HD Supply Waterworks LTD, 123 N Main St, Ste 3, Providence, RI 02903

Date of Hearing: May 30, 2107

Case No.: 55021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$2,000 in commissions due after his separation from employment. He also alleges he is due \$2,076.92 for three weeks of salary from March 6 through March 24, 2017.

At the hearing he clarified he was seeking only two weeks of salary between March 13 and March 24, 2017, in the amount of \$1,384.62 and approximately \$2,000 in unpaid commissions.

The employer denies the claimant is due any wages. The claimant was not paid a salary, but a draw against commissions. Further, his commissions were negative upon and after his separation from employment.

FINDINGS OF FACT

The claimant worked for the employer as an outside sales person from February 1, 2016 through his resignation pay period ending March 24, 2017. He worked on a draw against commission structure. He had a guaranteed payment for the first year, which ended January 31, 2017.

The claimant argues he was not paid a draw, but a salary, and did not receive the full salary for March 13 through March 24, 2017, of \$1,384.62.

The employer provided credible testimony and evidence, previously submitted, that the claimant was paid a draw against commission, not a salary. He had previously had a guaranteed payment, but it was still a draw, and that had expired January 31, 2017.

RSA 275:49 I requires that an employer inform employees of the rate of pay at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay 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 written payment plan clearly notified the claimant he would not receive a draw for the final pay period if he should resign his position.

The employer properly notified the claimant regarding the policy and practice of the draw against commission payments.

As an outside sales person, the claimant is not subject to RSA 279:21 Minimum Hourly Rate.

As the claimant resigned his position, and in accordance with the written policy, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed salary/draw.

The claimant alleges he is due approximately \$2,000 in unpaid commissions. He acknowledges he does not know an exact amount as he does not have access to the employer's documentation.

The employer provided credible testimony and documentation, Defendant's Exhibit #1, that the claimant was in negative balance regarding commissions.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed commissions.

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 RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he was not paid all wages/salary due, it is hereby ruled that this portion 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 the claimant failed to prove by a preponderance of the evidence that he was not paid all wages/commissions due, it is hereby ruled that this portions of the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 1, 2017

Original: Claimant
cc: Employer
MJD/das