

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

NGS Dental PLLC and Natalia Streltsov, DMD

DECISION OF THE HEARING OFFICER

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

Employer: Benjamin and Jodi Gitschier dba Graceful Image Farm, 858 Candia Rd,
Chester, NH 03036

Date of Hearing: June 27, 2017

Case No.: 55069

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she was an employee of Graceful Image Farm and is owed \$5,698.50 in unpaid wages. She was a student at the farm and claims she performed more work than she received credit for towards her tuition and services received.

Graceful Image Farm denies the claimant was an employee. She argues the claimant opted to perform tasks in exchange for services, lessons and care for her horse, at the farm through a student work program.

FINDINGS OF FACT

The claimant had a relationship with Graceful Image Farm between September 2015 and February 2017. She was a student at the farm taking riding lessons. During 2016, she also brought a horse to the farm for care, food and shelter. The claimant participated in a student work program which exchanged tasks performed at a certain dollar amount as credit towards lessons, riding time, services for a horse in her care, and the like.

The claimant now argues she was an employee during that entire period and should have received wages for work rather than credit towards her bill for services at the farm.

Graceful Image Farm argues that the claimant was not an employee. Further she not only received credit towards her debt to them for the tasks she chose to perform, but she additionally made cash and check payments towards her debt, and still owes an outstanding balance which is being reviewed in court.

This Department must first determine whether the claimant was an employee of an employer.

RSA 275:42 I Definitions. – Whenever used in this subdivision:

I. The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person, except employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed.

Ms. Gitschier provided credible testimony that she and her husband are partners in the farm and do not have any employees. As such, the claimant is not found to be an employee of an employer, because Graceful Image Farm is not found to be an employer under RSA 275:42 I.

Even if Graceful Image Farm had been found to be an employer, the claimant would not have met her burden to prove she is an employee.

RSA 275:42 I Definitions. – Whenever used in this subdivision:

II. "Employee" 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 claimant did not prove by a preponderance of the evidence that she engaged in any employment as required under RSA 275:42 II.

Further, there was no “meeting of the minds” between the parties for employment. The parties did engage in a barter arrangement to exchange services for credit towards payment of services rendered by the farm.

During the time frame for which the claimant is claiming wages, she engaged in services for the care of her own horse. She also contracted directly with other horse owners, to provide care for their horses in exchange for riding time, both of which were outside of the relationship with Graceful Image Farm, but for which time she is still claiming wages due.

Because the claimant is not found to be an employee of an employer, this Department lacks jurisdiction in this claim.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 “Proof by a preponderance of evidence” means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

DECISION

Based on the testimony and evidence presented, as RSA 275:51 V affords the Wage Claim process to employees of employers only, it is hereby ruled that the Wage Claim is invalid due to a lack of jurisdiction by this Department.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 30, 2017

Original: Claimant
cc: Employer

MJD/das