

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

David Gove

DECISION OF THE HEARING OFFICER

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

Employer: David Gove, PO Box 783, Belmont NH 03220

Date of Hearing: December 21, 2017

Case No.: 56178

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,250 in unpaid wages for hours worked between July and August 2017.

David Gove denies the claimant was an employee. He did not make any argument regarding the hours worked, only that he recalled the claimant often left early.

Mr. Gove offered the claimant \$600 to settle the claim at the hearing. The claimant refused the offer.

FINDINGS OF FACT

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.

David Gove's argument that the claimant was not an employee because he "did not have a zillion dollars" and could not afford to pay employment taxes for employees is not persuasive to show a worker is an independent contractor. Mr. Gove's argument regarding the claimant's status under RSA 282-A is not persuasive as that statute is not under the jurisdiction of this Department.

The Hearing Officer finds that the claimant was an employee of an employer, not an independent contractor, because neither party presented testimony or evidence to the contrary.

The claimant provided credible testimony and evidence he worked the hours claimed and did not receive the balance of the wages due, in the amount of \$1,250.

The employer did not provide any testimony or evidence to refute that of the claimant.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages in the amount of \$1,250.

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 \$1,250.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$1,250, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: January 4, 2018

Original: Claimant
cc: Employer

MJD/nm