

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Automotive Supply Associates, Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation

Employer: Automotive Supply Associates, Inc., 129 Manchester St, P.O. Box
1254, Concord, NH 03302

Date of Hearing: December 6, 2017

Case No.: 56200

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the matter of unpaid vacation, sick and personal time following the claimant's separation from the employer.

The claimant began work for the employer as a heavy duty parts sales representative in their Concord, NH location. Later, the claimant was transferred to the company's Rochester, NH location performing the same duties.

The claimant asserts he is owed \$844.60 for accrued benefit time.

The employer holds the claimant has been paid all wages due consistent with company policy.

On the basis of the claimant's assertion he is owed unpaid wages the claimant filed a Wage Claim with this Department on October 13, 2017; a Notice of Wage Claim was forwarded to the employer on this same date. The employer's objection to the wage claim was received on October 17, 2017 and forwarded to the claimant on October 18, 2017. The claimant requested a hearing on October 26, 2017; accordingly a hearing was held on December 6, 2017.

The claimant's spouse, Darlene Hunter, was present for the hearing.

FINDINGS OF FACT

The claimant earned \$20.00 per hour and was paid weekly, he accumulated fourteen (14) hours of personal time, eight (8) hours of sick time and forty eight (48) hours of vacation time.

The claimant worked for the employer from February 2016 through September 13, 2017 at which time his employment was terminated.

The claimant asserts that he was terminated for failing to open the store timely.

DISCUSSION

The claimant credibly testified that he had accrued benefit time prior to his separation from the employer.

The employer submitted a copy of their policy regarding the status of employee earned time upon separation. The policy states sick time and personal time is not paid out at separation. The policy goes on to state "If an employee's employment ends involuntarily, the employee **will NOT be paid** for unused, earned vacation time upon the end of employment." *See vacation policy.*

The claimant testified he understood that his accumulated benefit time would not be paid out if he were terminated. However, he feels he was terminated unjustly. Therefore, pursuant to the policy, he argues he is owed his accrued vacation time.

RSA 275:43 V states that vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, **when due** [emphasis added].

Earned time only becomes wages "when due." "When due" is a reference to contingencies specified in employers' policies.

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed the additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds that the claimant failed to meet this burden. There was, even by the claimant's testimony, a stated valid reason for his termination. It is found that the claimant's employment terminated involuntarily and therefore, pursuant to the written policy, he was not entitled to any accrued/ unused vacation time. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed the claimed vacation, sick and personal time.

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 RSA 275:43 V considers vacation, sick and personal time to be wages when due, if a matter of employment practice or

policy or both and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that this Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: January 5, 2018

Original: Claimant
cc: Automotive Supply Associates, Inc., 129 Manchester Street
P. O. Box 1254, Concord, NH 03302

DMZ/nm