

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Animal Emergency Medical Center of New England, Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid personal and holiday time

Employer: Animal Emergency Medical Center of New England, Inc.
168 Main Dunstable Road, Nashua, NH 03060

Date of Hearing: January 2, 2018

Case No.: 56376

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns a dispute between the parties as to the status of unpaid personal and holiday time upon separation. The claimant worked for the employer as a facility manager. The claimant asserted he is owed \$2,966.25 from accumulated vacation and personal time.¹

The employer holds the claimant has been paid all wages due.

On the basis of the claimant's assertion he is owed unpaid wages in the form of unpaid personal and holiday time, the claimant filed a Wage Claim with this Department on November 15, 2017; a Notice of Wage Claim was forwarded to the employer on November 16, 2017. With no response from the employer a notice of Hearing was sent to the parties on December 12, 2017. Later, on December 22, 2017, the Department received the employer's objection. A hearing was held on January 2, 2017.

Nadia Choubhry, Hospital Manager, appeared telephonically for the employer.

¹ The claimant dropped his claim for holiday pay at hearing resulting in a decrease in the total claim amount from the \$2,966.25 to \$2,862.25.

FINDINGS OF FACT

The claimant worked for the employer from January 2009 to September 12, 2017 as a facility manager. The claimant holds he resigned; the employer's position is that his employment was involuntarily terminated.

Prior to separation the claimant was earning \$26.25 per hour and paid biweekly.

The employer testified the claimant is not eligible for the payout of his accumulated personal time because he was involuntarily terminated and consistent with company policy. In support of this testimony the employer provided an employee handbook titled "Employee Handbook, v. 4.0;" with a revision date of July 1, 2017, as well as the claimant's signed acknowledgement, dated July 12, 2017, that he read and understood the policies contained in this handbook.

DISCUSSION

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed any 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 claimant's position that he terminated his employment with the employer is contradicted by the employer who credible testified and provided documentation that the claimant's employment was involuntarily terminated. For purposes of this report, the Hearing Officer finds that the claimant's employment was involuntarily terminated by the employer on September 12, 2017.

The claimant holds his last pay stub shows a balance of personal time of one hundred five (105) hours, and when multiplied by his hourly rate of pay (105 x \$26.25), he submits he is owed \$2,756.25.

The employer states that consistent with written company policy, when worker's employment is terminated involuntarily, they become ineligible to receive their accumulated personal time. The employer provided the claimant's signed and dated acknowledgement of receipt and understanding of this policy. The employer further argues that the New Hampshire Department of Labor reviewed and approved their employee handbook.

RSA 275:49 III requires that an employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275:49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification. This statute allows an employer to determine their policy concerning vacation, including *if* any payment is due at the employee upon separation.

The Hearing Officer finds the employer properly notified the claimant consistent with RSA 275:49 V by providing evidence that the claimant acknowledged reading and understanding their policy regarding personal time.

The claimant makes reference to the employer's accounting on a paystub that reflects a balance of one hundred five (105) hours of personal time as evidence he is owed this time.

The Hearing Officer finds that just because the employer did not reflect an accurate accounting of personal time on a paystub, it is insufficient evidence proving the claimant is due the wages he claims.

As 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 Hearing Officer finds the employer determined the claimant is not due the balance of his personal time using a process consistent with their policy. The policy reads in-part: "If the termination is due to involuntary reasons, employees will not be paid for any PTO that has been earned and not used.

It should be noted that the employer's argument that its employee handbook had pre-approval by the New Hampshire Department of Labor is not found to be persuasive. As a service to the business community this Department does review company policies when requested. This review is **limited** to flagging statements that conflict with New Hampshire labor statute. This is not an "approval" process, nor does this Department inform an employer in any way that their employee handbook is "approved" or "accepted" by the New Hampshire Department of Labor.

The Hearing Officer finds that the claimant did not meet this burden. The claimant did not provide convincing evidence or testimony that the employer owes him for accumulated personal time

Therefore, the Hearing Officer finds the claimant fails to prove by a preponderance of the evidence that he is owed additional wages in the amount of \$2,756.25.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 275:43 V considers the payment of vacation 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 evidence that he is due additional wages in the amount of \$2,756.25, it is hereby ruled this Wage Claim is invalid.

David M. Zygmunt
Hearing Officer

Date of Decision: January 26, 2018

Original: Claimant
cc: Animal Emergency Medical Center of New England, Inc.
168 Main Dunstable Road, Nashua, NH 03060
Attention: Nadia Choubhry, Hospital Manager

DMZ/nm