

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

Kunysz-Winder LLC dba Summit Supply

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 279:21 VIII unpaid overtime pay

Employer: Kunysz-Winder LLC dba Summit Supply, 25 Commercial Dr, Brentwood NH
03833

Date of Hearing: April 16, 2018

Case No.: 56671

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$44,210.19 in unpaid overtime pay for the period of January 9, 2015 through October 9, 2016. He argues the employer misclassified him as a salary exempt employee when he should have been salary non-exempt, and entitled to overtime pay, because he did not have management responsibilities.

He also stated he approached the US Department of Labor regarding this issued and they advised they did not have the resources to pursue his claim. He contacted this office following that advice.

The employer denies the claimant is due any overtime wages. He was appropriately classified as a salary exempt employee and therefore not entitled to any overtime pay. Further, they argue this is not the proper jurisdiction as the employer is subject to the US Department of Labor.

Claimant's counsel attempted to submit documentation for consideration after the close of the hearing. This documentation was returned to claimant's counsel as ex parte communication. This documentation was not reviewed by the Hearing Officer and not considered for this Decision.

FINDINGS OF FACT

The claimant argues he is due overtime wages under the Fair Labor Standards Act (FLSA) because the employer misclassified him as a salary exempt employee when he should have been classified as salary non-exempt because he did not have management duties.

RSA 279:21 VIII exempts employees from the requirements of overtime pay if they are subject to the FLSA.

The claimant did not present any proof that the employer is not subject to the FLSA and that this Department has jurisdiction in this matter.

Therefore, the New Hampshire Department of Labor does not have jurisdiction on this issue. The claimant may have a cause of action in another venue.

Even if this Department did have jurisdiction, the claim would have failed.

The claimant worked as a salaried employee for the relevant period of time of this claim, January 9, 2015 through October 9, 2016. The claimant is time barred by RSA 275:51 V for any claim of wages prior to January 19, 2015.

The claimant received the same salary for each week regardless of the number of hours worked, as allowed by RSA 275:43-b. The claimant did receive an increase and salary and that salary level was maintained throughout the rest of the relevant time period, documentation previously submitted.

The claimant's argument that his pay stub referenced 40/80 under the hours worked is not persuasive that he was an hourly employee. Accounting on a pay stub does not change an employee's status. He also provided his personal contemporaneous time records, which showed that he did not work 40 hours each week, but that he worked different hours each week and was paid his same regular salary each biweekly pay period.

The claimant's argument that he was a non-exempt employee, which means he is entitled to overtime is also not persuasive as this Department does not use or define the terms exempt and non-exempt. This Department uses the terms hourly and salaried to determine a pay status. There are no exemptions RSA 275:43-b regarding salaried employees to require overtime payments for hours worked over 40. There are also no limitations on what jobs can be paid a salary.

The claimant previously submitted personal contemporaneous time records, which do not match the spreadsheet he created in the calculation for this wage claim.

As the claimant would be considered a salaried employee, he would not be entitled to overtime. Even if he were, the time records on which he relies do not bear out the wages claimed.

Therefore, the Hearing Officer would have found that he failed to prove by a preponderance of the evidence he is due the claimed overtime pay.

DECISION

Based on the testimony and evidence presented, as RSA 279:21 VIII exempts employees covered under the Fair Labor Standards Act, 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: April 25, 2018

Original: Claimant
cc: Claimant's Attorney (separate addresses for both)
Employer
Employer's Attorney

MJD/nm