

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**XCube Research & Development Inc and Satish Jha**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay  
RSA 275:43-b unpaid salary

**Employer:** XCube Research & Development Inc, 126 Marsh Rd, Pelham NH 03076  
Satish Jha, 18 Chatham Cir, Wellesley MA 02481

**Date of Hearing:** April 12, 2018

**Case No.:** 56849

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts that XCube Research & Development Inc should be held liable for liquidated damages for \$65,100 in previously unpaid salary/wages for the period of February 1, 2017 through August 28, 2017 and \$10,500 in unpaid vacation pay. He additionally asserts Satish Jha should be personally liable.

Satish Jha argues he had no management of the company and did not supervise the claimant. Mikael Taveniku and Satish Jha both accuse the other of having control of the company.

No representative of XCube Research & Development Inc appeared for the hearing.

**FINDINGS OF FACT**

The claimant was a founding member of the employer in March 2010. He was originally the Chairman of the Board of Directors and President of the corporation. He hired Satish Jha in January 2017 as the CEO and Mr. Jha replaced the claimant as Chairman of the Board of Directors. The claimant remained President of the corporation and became the Secretary of the Board of Directors. He received a semi-monthly salary of \$4,200. He argues he is an employee in addition to these roles. Mr. Jha terminated the claimant's employment on August 20, 2017.

The New Hampshire Supreme Court, in W. Bradford Caswell v BCI Geonetics Inc. 121 NH 1048, opined "The question in this case is whether an officer of a corporation is an "employee" within the context of a back pay claim under RSA ch. 275. We hold that he is." and "Nowhere does RSA 275:42 V bar one in the position of the

plaintiff [vice president and officer of the corporation] from being an employee for purposes of pay or hours protection under RSA ch. 275. We find no ambiguity in the use of the word "employee" and accordingly answer the question in the affirmative."

Caswell is distinguishable from the instant case because he did not have any ownership of the corporation, as the claimant does. Neither party presented any case law on this issue of a corporate officer who has an ownership in the corporation and who is also an employee. Therefore, the Hearing Officer finds the claimant is an employee for the context of this claim.

The claimant seeks liquidated damages on these wages from the time the wages were due within the required timeframe of his separation from employment on August 28, 2017. He seeks to hold Satish Jha personally liable for the liquidated damages as he claims Mr. Jha had control of the company and chose not to pay him.

The claimant, in his unique position as founder and President of the corporation, provided credible testimony that there were no funds in the company to pay wages. Some employees did receive wages with what little funds were in the company, but many employees were not able to be paid, including himself.

Satish Jha denies personal liability as he did not have control of the company during the claimant's employment. He alleges Mikael Taveniku had control of the company.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds the employer did not have the financial ability to pay the wages due. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay him all wages due in the time required, because the employer did not have the financial ability to pay.

As no liquidated damages are found to be due, no personal liability can be assessed.

However, even if damages were due, the Hearing Officer would not have found Satish Jha to be personally liable.

RSA 275:42 V For the purposes of this subdivision the officers of a corporation and any agents having the management of such corporation who knowingly permit the corporation to violate the provisions of RSA 275:43, 44 shall be deemed to be the employers of the employees of the corporation.

The claimant did not present credible or persuasive testimony or evidence that Satish Jha should be held personally responsible for claim.

Therefore, the Hearing Officer would have found that the claimant failed to prove by a preponderance of the evidence that Satish Jha should be held personally liable for the claim.

The claimant has filed a previous claim with this Department which was found meritorious after a hearing. The claimant was allowed to file this claim as he was not familiar with the administrative rule nor was he represented by counsel.

The claimant is advised that future claims regarding the same "cause of action", arising out of the same factual transaction, are barred under the doctrine of res judicata under University of N.H. v. April 115 N.H. 576 (1975), which states that a judgment on the merits is conclusive upon the parties "both as to what was actually litigated and as to everything that might have been litigated", thereby extinguishing the claimant's rights to remedies.

The parties have additional issues which extend beyond the jurisdiction of this Department and are being litigated separately.

### **DECISION**

Based on the testimony and evidence presented, and as RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim is invalid.

As this Department finds that the claimant failed to prove by a preponderance of the evidence that damages were due, therefore Satish Jha could not have knowingly permitted the company to violate the provisions of RSA 275:43, 44, it is hereby ruled that this individual was not the employer of the claimant, under RSA 275:42 V.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: April 26, 2018

Original: Claimant  
cc: Employer

MJD/nm