

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Things Remembered, Inc.

**DECISION OF THE HEARING OFFICER**

**Appearances:** [REDACTED], District Director  
Things Remembered, Inc.

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid sick pay  
RSA 275:43 V unpaid time off  
RSA 275:43 V unpaid severance  
RSA 275:43-b unpaid salary

**Claimant:** [REDACTED]

**Employer:** Things Remembered, Inc., 5500 Avion Park Drive  
Highland Heights, OH 44143

**Date of Hearing:** May 15, 2018

**Case No.:** 56865

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant was a store manager for the employer. The employer is a national retailer.

The claimant's employment was terminated on February 26, 2018.

The current issue concerns alleged unpaid sick pay, unpaid - paid time off, unpaid severance and unpaid salary.

The employer holds the claimant has been paid in-full and is not owed additional wages.

On the basis of the claimant's assertions he is owed unpaid wages he filed a Wage Claim with the Department on March 2, 2018; a Notice of Wage Claim was forwarded to the employer this same date. The employer's objection was received on March 26, 2018; a Notice of Employer's Objection was forwarded to the claimant this same date. On March 30, 2018 the claimant requested a Hearing. Notices

of Hearing were forwarded to the parties on April 12, 2018. The employer requested a reschedule of the Hearing on April 18, 2018; Notices of Rescheduled Hearing were forwarded to the parties on April 26, 2018.

A formal hearing on this matter was scheduled for May 15, 2018 at the New Hampshire Department of Labor in Concord, New Hampshire. The claimant did not appear for the hearing. After waiting fifteen (15) minutes with no response from the claimant that he was delayed or running late, and in accordance with Lab Rule 203.04, the Hearing went forward with the testimony of the employer.

### FINDINGS OF FACT

The claimant worked as a store manager for the employer's Newington, New Hampshire location.

Through his pleading the claimant holds he is owed \$5,812.89 for unpaid sick pay, unpaid paid time off, unpaid severance and unpaid salary; he did not provide a detail of the specific amounts he feels he is owed for each.

The employer testified the claimant was a salaried employee earning an annual salary of \$42,500.00 divided into biweekly pay periods.

The employer testified they have paid the claimant all his wages due and his eligible paid time off.

The employer presented credible evidence that the claimant was paid his eligible personal time via a direct deposit into his bank account.

The claimant failed to appear for the Hearing he requested with credible testimony and evidence to support his claim.

### DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she is owed 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 alleges through his pleading that the employer owes him for unpaid sick pay, unpaid paid time off, and unpaid severance.

The employer credibly testified they do not pay-out unpaid sick pay and they do not offer severance. The employer conceded to a practice of paying out paid time off.

RSA 275:43 V states that severance pay, personal days, and sick pay, 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 by this writer]**.

Severance pay, personal time, and sick pay only become wages "when due." "When due" is a reference to contingencies specified in employers' policies.

The claimant failed to provide credible evidence the employer pays out sick time or has a severance program per practice or written policy. Therefore, this Hearing Officer finds the claimant failed to prove by a preponderance of evidence he is due severance or sick pay.

The claimant wrote in his pleading that he was discharged for leaving and closing the store to seek medical attention; he wrote he had prior permission to do so.

The employer testified the claimant was discharged "due to his egregious breach of a Company policy," holding the claimant left and closed the store without first alerting the employer and getting permission.

RSA 275:43-b I states, in-part, that a salaried employee shall receive a full salary for any pay period in which the employee performs any work without regard to the number of days or hours worked. However, RSA 275:43-b II allows employers to prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, **or is terminated for cause by the employer [emphasis added by this writer].**

The current standard for a "for cause" termination is established by Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). The Decision sets the standard as, "articulated at 82 Am. Jur. 2D *Wrongful Discharge* § 183 (2003), which provides that an employer may dismiss an employee "for cause" if the employee engages in misconduct. An employee's misconduct must comprise reasonable grounds for termination, and the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination. 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003); see also *Lowell v U.S. Sav Bank*, 132 N.H. 719, 726 (1990) (an employer must offer an employee a proper reason for a "for cause" dismissal). In reviewing a "for cause" dismissal, "the fact finder must focus not on whether the employee actually committed misconduct, but rather on whether the employer reasonably determined it had cause to terminate." 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003)."

This Hearing Officer finds the employer reasonably determined they had cause to terminate the claimant's employment.

The employer testified they paid the claimant for two (2) hours of work as required by New Hampshire Labor statute. The statute the employer is referring to is RSA 275:43-a; this statute addresses hourly employees, it does not cover salaried employees.

This Hearing Officer cannot determine whether the claimant was paid the correct prorated salary amount; claimant failed to provide credible evidence as to where his final day of work fell in the employer's pay period nor did he provide a dollar amount for the salary he feels the employer owes him. Therefore, this Hearing Officer finds the claimant did not prove by a preponderance of the evidence he is due any additional salary.

This Hearing Officer finds the claimant failed to meet his burden to prove by a preponderance of the evidence that he is owed additional wages in the form unpaid sick pay, unpaid paid time off, unpaid severance and unpaid salary.

## DECISION

Based on the evidence and testimony presented and as RSA 275:43 I requires that an employer pay all wages due an employee and as RSA 279:43 V considers unpaid sick pay, unpaid paid time off, unpaid severance to be wages when due and as RSA 275:43-b requires employers to pay employees their full salary if they work any part of the pay period but allows employers to prorate employee's salary if the employee is discharged for cause and as the Department finds the claimant failed to meet his burden to prove by a preponderance of evidence he is owed the claimed wages it is hereby ruled this Wage Claim to be invalid.

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[REDACTED]  
Hearing Officer

Date of Decision: June 14, 2018

Original: Claimant

Cc: Things Remembered, Inc., 5500 Avion Park Drive  
Highland Heights, OH 44143  
Attention: [REDACTED]

[REDACTED]