

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Town of Pittsburg

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay
RSA 275:43 VII unpaid compensatory time
RSA 275:42 I/II employer/employee relationship

Employer: Town of Pittsburg

Date of Hearing: September 13, 2018

Case No.: 56955

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$7,200.21 in unpaid vacation pay, unpaid sick leave pay, and unpaid compensatory time. Prior to the hearing, the claimant received a check from the employer for \$2,111.45, gross, for 12.5 sick days. He chose to continue for the balance.

The employer argues the claimant received a check for the claimed compensatory time in January 2017, documentation previously submitted. He was injured at work on January 3, 2017, and did not return to work. As such, he was not gainfully employed and did not accrue and vacation and sick time as claimed.

FINDINGS OF FACT

The claimant was elected to the position of Road Agent for the Town of Pittsburg.

Pursuant to Lab 803.05 the term "employee" as it applies to RSA 275:42, II and RSA 279:1, X, shall not apply to elected public officials, of counties or municipalities.

DISCUSSIONS AND CONCLUSIONS

The claimant's argument that he reported to the Board of Selectmen and that he used the handbook and rules of other employees is not a persuasive argument regarding his status as an elected official.

Therefore, the claimant is not considered an employee under this jurisdiction.

Even if the claimant had proven he was an employee of an employer, this claim would have been found invalid.

The employer provided credible testimony and evidence, a copy of the check was previously submitted, that the claimant received payment in full for the claimed compensatory time.

The claimant was injured on January 3, 2017, and therefore did not accrue the claimed vacation or sick time between that date and the date his term expired.

DECISION

Based on the testimony and evidence presented, as RSA 275:51 V affords the Wage Claim process to employees of employers only, it is hereby ruled that the Wage Claim is invalid due to a lack of jurisdiction by this Department.


Hearing Officer

Date of Decision: September 20, 2018

Original: Claimant
cc: Employer
Employer's Attorney