

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

The Homemakers Health Services

DECISION OF THE HEARING OFFICER

Appearances:

█, Claimant
█, Finance Director
The Homemakers Health Services

Nature of Dispute: RSA 275:44 IV liquidated damages

Claimant:

█

Employer:

The Homemakers Health Services, 215 Rochester Hill Road
Rochester, NH 03867

Date of Hearing: May 23, 2018

Case No.: 56971

BACKGROUND AND STATEMENT OF THE ISSUES

The employer is a provider of home health care.

The claimant is a nurse who worked for the employer from July, 2016 through December 31, 2017.

The current issue concerns liquidated damages.

The claimant holds she is entitled to liquidated damages due to the employer's delay in the payment of her earned time.

The employer concedes the claimant was due the earned time she claimed but their failure to pay her was due to a clerical error.

On the basis of the claimant's assertions she was owed unpaid wages in the form of earned time she filed a Wage Claim with the Department on March 30, 2018. A Notice of Wage Claim was forwarded to the employer on April 2, 2018. The employer's objection was received on April 9, 2018, along with a copy of an endorsed check to the claimant for the claim amount. On April 9, 2018 the objection was forwarded to the claimant. On April 16, 2018 the claimant requested a Hearing for liquidated

damages. Accordingly Notices of Hearing were forwarded to the parties on May 2, 2018. Additional employer exhibits were received on May 17, 2018.

FINDINGS OF FACT

The claimant earned \$26.00 per hour providing at-home nursing services for the employer's patients; the employer paid her biweekly.

The claimant resigned her position effective December 31, 2017.

The employer has a written policy regarding earned time.

The claimant had accumulated 69.67 hours of earned time at the time of her separation.

According to the employer's policy, the claimant was entitled to a payout of 25% of this time or 17.42 hours (.25 x 69.67).

On or about April 4, 2018 the employer paid the claimant for the 69.67 hours of earned time. At this time the employer took responsibility for their failure to pay the claimant her earned time stating it was in error that this time was not logged into their payroll system.

The claimant testified she intended to ask the status of her earned time the last time she was in the employer's office in order to return supplies but she testified she was asked to leave the premises. The claimant did not testify to any additional efforts she made to obtain her earned time.

The claimant seeks liquidated damages in the amount of \$452.92.

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.

RSA 275:44 IV holds that: "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition."

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/he fails to pay them".

The claimant argues that the employer is experiencing financial difficulty and is therefore potentially predisposed to forgo paying employees their wages. The claimant did not provide any credible testimony or evidence in support of any instances where the employer failed to make payment for wages due to any of the company's employees as a result of experiencing financial difficulty.

RSA 275:44 IV requires the employer to have acted willfully in their failure to pay an employee in order for the employer to be responsible for the payment of liquidated damages. This Hearing Officer finds the claimant failed to prove the employer willfully withheld the payment to her of her earned time.

The employer credibly testified that their failure to timely pay the claimant the earned time she was due was a result of their error, not due to their willful withholding of the funds.

Therefore this Hearing Officer finds the claimant did not meet her burden to prove by a preponderance of evidence she is entitled to liquidated damages in the amount of \$452.92.

DECISION

Based on the evidence presented and as RSA 275:44 IV holds that if an employer willfully and without good cause fails to pay an employee wages as required, and as the Department finds the claimant did not prove by a preponderance of evidence that she is owed \$452.92 in liquidated damages, it is hereby ruled that this Wage Claim is invalid.

[REDACTED]
Hearing Officer

Date of Decision: June 22, 2018

Original: Claimant

Cc: The Homemakers Health Services, 215 Rochester Hill Road
Rochester, NH 03867
Attention: [REDACTED]

[REDACTED]