

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Derry Neurological Associates

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:42 III educational benefit
RSA 275:43 V unpaid earned time
RSA 275:43-b unpaid salary
RSA 275:48 II illegal deductions
RSA 275:44 IV liquidated damages
Interest

Date of Hearing: October 31, 2018

Case No.: 57724

BACKGROUND AND STATEMENT OF THE ISSUES

- The claimant asserts he is owed the following:
- \$9,423.05 for five weeks of unpaid earned time;
 - \$1,678.13 for his personal cost to procure health insurance;
 - \$1,807.65 for unreimbursed educational benefit; and
 - He further seeks liquidated damages and interest.

At the hearing he removed the claim for unpaid salary.

The employer denies the claimant is due any further wages. He was paid in full pursuant to their policy.

FINDINGS OF FACT

The claimant worked for the employer from 2004 through August 9, 2018, when he was terminated.

On May 15, 2018, the claimant tendered his written resignation with an effective date of August 31, 2018. The employer called a meeting with the claimant on June 18, 2018, to discuss his resignation. At the meeting, the employer notified the claimant he would receive 1/6 of all of his benefits, to include his earned time as he would have worked 1/6 of the fiscal year when he separated on August 31, 2018 and the \$2,000 educational benefit. The claimant requested to continue his health insurance until September 30, 2018, when his new health insurance would become effective and the employer agreed to do so as a gesture of goodwill.

The claimant acknowledges he was unhappy with the employer's decision to only pay 1/6 of his earned time and educational benefit, when he felt he was due the full five weeks and educational benefit when the benefits reset as of July 1, 2018. He was vocal about his displeasure with other staff members.

Several employees complained to the employer that they felt uncomfortable with the claimant's verbal issues with the employer.

On July 14, 2018, the employer asked the claimant to sign a non-disclosure agreement regarding the issues surrounding his separation. In exchange for this signature, they would continue the previous agreement that they would continue his health insurance until September 30, 2018. If the claimant did not sign it, his health insurance would cease on his termination date.

The claimant refused to sign the non-disclosure agreement because he could not not talk about the issues that were bothering him.

The employer terminated the claimant's employment on August 9, 2018. He received one week of vacation pay, or 1/6 accrual for the year, even though he only worked five weeks in the current annual benefit period (July 1, 2018 through August 9, 2018). He also received 1/6 of the \$2,000 educational benefit for the same period.

The claimant argues he is due the remaining balance of the 5/6 of the benefit bank, or five weeks, totaling \$9,423.05, as he believes that the total earned time for the year was granted to him on July 1.

The employer argues the claimant was paid 1/6 of the total earned time off benefit for the benefit year beginning July 1, 2018, even though he only worked five weeks when he was terminated August 9, 2018.

The employer uses vacation pay and earned time pay interchangeably.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay/earned time pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275:49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The claimant agrees he received the employee handbook, though he states he "has never seen" the section of the handbook regarding vacation. He also agrees that the payment he received is consistent with the terms of the handbook, but he argues another employee received a greater payout which sets precedent for him to receive the same as that employee.

The parties agree that the time off benefits reset on July 1 for the year, although the written policy reads, in relevant part, "EARNED TIME – GOES FROM JAN. – DEC."

The policy also reads, "Leaving the Company, You will be paid for accrued but unused vacation time as part of your last check."

The written policy of the employer could have been clearer in its intentions. There is a discrepancy in the twelve month period in which benefit time is calculated, though the parties agree they understand the practice. The "leaving the company" section is the only area of the policy that provides insight as to whether vacation time is accrued or granted.

Based on the written policy and the practice of the employer, the earned time is accrued beginning July 1 of each year. The claimant had accrued five weeks of earned time when he was terminated on August 9, 2018, or 5/52 of the year. He received 1/6 of the accrual for the year, which is greater than 5/52.

The claimant argues he is due \$1,678.13 for health insurance coverage between August 31, 2018 and September 30, 2018. The employer had initially agreed to cover his health insurance from August 31, 2018 through September 30, 2018, during the June 18, 2018, meeting, and then changed the terms of the agreement when he refused to sign the non-disclosure agreement in July 2018.

The employer argues the terms of the agreement changed with the claimant's behavior and after numerous requests for his behavior to change. He was notified in writing, prior to the change in the agreement.

The claimant argues he is due the remaining balance of the 5/6 of the educational benefit, totaling \$1,807.65, as he believes that he is entitled to the full benefit of \$2,000 for the year beginning July 1.

The employer argues the claimant was paid 1/6 of the total educational benefit for the benefit year beginning July 1, 2018, even though he only worked five weeks when he was terminated August 9, 2018.

No written policy was presented regarding this benefit. The claimant presented that the employer offers an educational allotment of \$2,000 to be used during the year. No testimony or evidence was offered to show if this is a reimbursement program for money spent on education or if this is pay for time used for educational purposes.

CONCLUSIONS

The claimant's argument that another employee received the similar benefit time as the payment he seeks, is not found persuasive. This sets no precedent for this jurisdiction as each employee can negotiate their own best deal. Further, as the policy provides notice that the earned time is accrued and the practice is for the time to reset on July 1, 2018, and the claimant received an amount greater than the actual time accrued, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed earned time pay.

The employer is allowed to change the terms of an agreement for benefits with prior notice. Because the employer noticed the claimant they would not pay his continued health insurance prior to the cancellation of his health insurance, the Hearing

Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed out of pocket insurance payments.

The claimant did not present persuasive testimony or evidence he is due the balance of educational benefit, therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed educational benefit.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers earned time pay/vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any earned time pay/vacation pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:48 II holds an employer liable to an employee for lost medical insurance benefits under certain circumstances, and as this Department finds claimant failed to prove the employer had an obligation to provide health insurance for the period of August 31, 2018 and September 30, 2018, it is hereby ruled that this portion of the Wage claim is invalid.

As RSA 275:42 III considers educational funding pay to be wages, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due the claimed educational funding, it is hereby ruled that this portion of the Wage Claim is invalid.

████████████████████
Hearing Officer

Date of Decision: November 14, 2018

Original: Claimant
cc: Employer