

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

DMS Insurance Agency of New Hampshire LLC DBA Melcher & Prescott Insurance

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Date of Hearing: December 17, 2018

Case No.: 57972

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$711.49 in unpaid salary. She was terminated six days into the biweekly pay period and did not receive her full salary. She alleges the employer is prohibited from docking her salary and is due the claimed balance.

The employer denies the claimant is due any further salary. They paid her salary for the first week of the pay period and for the full day on which she was terminated, even though she only worked one half of the day.

FINDINGS OF FACT

The claimant worked for the employer from June 2017 through September 28, 2018, when the employer terminated her employment. She was a salaried employee receiving a biweekly salary of \$1,423.08, gross, for the relevant time period of this claim.

The employer provided the claimant with a Record of Written Warning letter on September 13, 2018, in which they discussed her ongoing tardiness, taking a full day off when only a half day was approved, and not calling in on a timely basis for an unscheduled day off.

This letter notified the claimant that termination could be a result of continued non-compliance.

The claimant signed this notice on September 13, 2018.

The employer believed the claimant was continuing to be tardy to work because of her log-in time on the system and an employee eye witness who reported her to Human Resources as arriving later than her scheduled start time.

The employer terminated the claimant's employment on September 28, 2018, as they believed she was not taking the written warning seriously.

The claimant received a prorated salary for six days of work in the biweekly pay period.

The claimant argues she is due the balance of her biweekly salary of \$711.49, because the employer is prohibited from “docking” her salary. She argues that she was not tardy to work, but that she had issues with logging into the system and would do “busy work” until the system was available for her to log in.

RSA 275:43-b II permits an employer to prorate salary to a daily basis when a salaried employee “is terminated for cause by the employer”.

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)”.

The employer is permitted to prorate the claimant’s salary to the number of days worked in the pay period pursuant to RSA 275:43-b II, because they terminated her employment for cause.

The Hearing Officer finds the employer reasonably determined they had cause to terminate the claimant based on the log-in records and the employee eye witness under the standard set forth in Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). No finding is made on whether or not the claimant was indeed tardy to work subsequent to September 13, 2018.

CONCLUSIONS

The Hearing Officer finds that the employer reasonably determined that it had cause to terminate the claimant when she continued to appear late for work after being warned of impending termination in the September 13, 2018, Record of Written Warning letter. The Hearing Officer, therefore, finds that the employer terminated the claimant “for cause” and that the claimant fails to prove by a preponderance of the evidence that she is owed any additional salary.

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-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant failed to prove by a

preponderance of the evidence that she was not paid all wages/salary due, it is hereby ruled that the Wage Claim is invalid.

[REDACTED]
Hearing Officer

Date of Decision: December 27, 2018

Original: Claimant
cc: Employer