

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Golden Goose Property Management LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Date of Hearing: December 17, 2018

Case No.: 58075

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserted, through the filing of his wage claim, that he was owed \$1,153.84 for four days of unpaid wages due upon his separation from employment.

He received a check in the amount of \$422.54 prior to the hearing. He chose to continue for the balance of the claim, or \$731.30.

The employer denies the claimant is due any further wages.

FINDINGS OF FACT

The claimant worked for the employer from February 3, 2018 through October 11, 2018, when he was terminated. He was a salaried employee earning an annual salary of \$75,000 paid on a biweekly basis of \$2,884.62. This equates to an hourly rate of \$36.06 per hour for a forty hour work week.

The claimant initially argued he worked the four days between October 8 and 11, 2018, and only received \$422.54. He sought the balance of \$731.30 as due.

The employer argues that they paid the claimant in full. She previously submitted the following breakdown: 32 hours worked October 8 through October 11, 2018, plus 1.23 hours of accrued vacation, less 4.92 hours of used, but not accrued PTO, totaling 28.31 hours. 28.31 hours at a rate of \$36.06 per hour totals \$1,020.87. They deducted \$63.29 for Social Security tax and \$14.80 for Medicare tax. They further deducted \$15.78 for dental insurance which continued through October 11, 2018 and \$504.45 for medical insurance which continued through October 31, 2018, leaving a net payment of \$422.54.

The claimant then argued that the employer was "cooking the numbers" on the amount he is owed. He argues that the employer cannot deduct \$504.45 for medical insurance through October 31, 2018, because his insurance cancelled on his final day of work, October 11, 2018. He further argues the days he took off for which the employer

is making deductions were in exchange for holidays he had worked, and he is owed the \$177.42 which was deducted.

Pursuant to RSA 275:48 I No employer may withhold or divert any portion of an employee's wages unless:

(b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or for any of the following:

(9) Medical, surgical, hospital, and other group insurance benefits without financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded;

and:

(f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

The claimant does not dispute that he elected to have medical insurance through the employer. The employer provided credible testimony that their medical insurance cannot be terminated mid-month. They provided documentation, previously submitted, to show they made the payment for the claimant's medical insurance as billed for the month of October 2018. The claimant's testimony that his medical insurance was cancelled as of October 11, 2018, is not persuasive as he could not provide any documentation, such as a certificate of coverage or cessation of insurance, from the medical insurance carrier, and in light of the employer's documentation. Therefore, the employer is permitted to make the necessary deductions for the claimant's medical insurance.

No testimony was presented from either party that the claimant made any request, verbal or written, pursuant to RSA 275:48 I (f). Because the claimant did not authorize the employer to deduct any deficit of the allowable benefit time from his final wages, they are precluded from making these deductions from his wages.

CONCLUSIONS

Pursuant to RSA 275:48 I (b)(9), the employer is allowed to make the necessary deductions from the claimant's wages for his medical insurance, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed medical insurance deductions from his wages.

Pursuant to RSA 275:48 I (f), the employer is not permitted to make the any deductions from the claimant's wages for any benefit time deficit without a prior authorization from the claimant, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed 4.92 PTO hours at a rate of \$36.06 per hour, or \$177.42.

DECISION AND ORDER

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 275:48 I allows an employer make deductions from wages due an employee with proper authorization, and as this Department finds that the employer is permitted to make deductions for medical insurance, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:48 I allows an employer make deductions from wages due an employee with proper authorization, and as this Department finds that the employer failed to obtain the proper authorization for the deduction for the benefit time, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$177.42 (4.92 hours x \$36.06 per hour).

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$177.42 (4.92 hours x \$36.06 per hour), less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: December 20, 2018

Original: Claimant
cc: Employer