

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**UNH**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:44 IV liquidated damages

**Date of Hearing:** January 15, 2019

**Case No.:** 58052

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts the employer is liable for \$11,996.75 in liquidated damages for their failure to pay his final wages within seventy-two hours of their termination of his employment.

The employer denies the claimant was paid later than required by statute. Further, the error in procuring his wages on an expedited basis, at his request, was corrected as soon as possible.

**FINDINGS OF FACT**

The first issue is whether this Department has jurisdiction over work performed in Texas.

Attorney General Charles T. Putnam issued an Opinion of the Attorney General, #87-35 (1987). The cited opinion provides the criteria for jurisdiction under New Hampshire Department of Labor.

The Opinion of the Attorney General #87-35 issued by Attorney General Charles T. Putnam reads:

“In determining whether it would be fundamentally fair to these parties to have the division decide this action, the following factors were examined:

- (a) was the work performed in New Hampshire?
- (b) was the employment principally located in New Hampshire?
- (c) Did the employer supervise the employee’s activities from a place of business in New Hampshire?
- (d) Did the parties agree in the employment contract or otherwise that their rights should be determined under New Hampshire wage payment statute?
- (e) Does New Hampshire have some other reasonable relationship to the parties and the employment?

The claimant agreed he worked from Texas and that his employment was principally located in Texas. He made no statements regarding whether or not he was supervised from New Hampshire. No documentation or testimony was presented that the parties had agreed rights should be conveyed under New Hampshire statute. No argument was made regarding a reasonable relationship

The Hearing Officer finds that the work was not performed in New Hampshire. The employment was not principally located in New Hampshire. The claimant was not supervised from New Hampshire. No agreement was presented to show the parties agreed to rights under the New Hampshire wage payment statute. No argument was presented to show New Hampshire has a reasonable relationship to the parties and the employment.

Therefore, this Department lacks jurisdiction in this matter.

Even if the Department did have jurisdiction in this matter, the claim would have failed.

The claimant asserts that he was terminated by the employer on September 26, 2018, and the employer failed to pay all wages due within seventy-two hours as required by RSA 275:44 I, and therefore is liable to him for liquidated damages under RSA 275:44 IV. He received his interim salary continuation and unused vacation payment in full on October 6, 2018. Due to constraints of his bank, portions of those wages were not available immediately. It is noted this is a replacement check as the initial check was a gross amount, not net. The claimant also takes significant issue with receiving a check rather than direct deposit, as he received prior.

UNH asserts that the claimant's separation from employment was actually October 31, 2018, not September 26, 2018.

The claimant was on an interim leave as he was out on medical leave. Pursuant to the company policy, an employee remains employed for six months after they are placed on medical leave. During this time, salary and benefits continue, as well the position is held for that period of time in case they are able to return. If they are not able to return, they are eligible to apply for long term disability through a third party vendor.

In the claimant's case, the application for long term disability was not processed timely. As such, and knowing an issue existed, UNH noticed the claimant on September 20, 2018, that if his long term disability application were not approved or denied prior to September 26, 2018, his scheduled termination date, that he would be placed on unpaid administrative leave with continued access to medical and other benefits until such time as the application was approved or denied.

His long term disability application was not processed and determined until November 1, 2018. He remained an employee through October 31, 2018, on unpaid administrative leave with access to medical and other benefits.


As the claimant remained an employee through October 31, 2018, and received all scheduled wages on October 6, 2018, off payroll cycle at his request, UNH would not have been in violation of RSA 275:44.

Further, UNH did not violate statute by presenting a paper check, rather than direct deposit.

**DECISION**

As the claimant failed to state a cause of action under the jurisdiction of this Department, it is hereby ruled that the Wage Claim is invalid.

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Hearing Officer

Date of Decision: January 28, 2019

Original: Claimant  
cc: Employer