

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

█  
v.

Opportunity Networks, Inc.

Case # 100780

DECISION OF THE HEARING OFFICER

**APPEARANCES:** █ – Claimant  
Cynthia Gautreau - Employer representative

**NATURE OF DISPUTE:** RSA 275:43 I — Weekly, Unpaid Wages

**DATE OF HEARING:** April 5, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage claim on January 19, 2022, alleging that she was owed \$675.00 in unpaid mileage reimbursement. Notice of the claim was sent to the employer on January 20, 2022. The employer responded to the Department on January 25, 2022, stating that the claimant had been paid \$487.50 in mileage reimbursement and requesting that the claimant submit any outstanding mileage logs for reimbursement. The claimant requested the hearing on March 11, 2022. The hearing notice was issued March 15, 2022.

At the hearing the employer again expressed willingness to pay the claimant for outstanding mileage if the claimant would submit a mileage log for reimbursement. The claimant was unsure if she could track her mileage for the months of October and November 2021. The hearing officer informed the parties of the 30-day deadline for the decision and instructed the claimant to contact the Department if a resolution of the case is reached.

**FINDINGS OF FACT**

The following findings are based on testimony and matters of record in the Department file.

The claimant is a 41-year-old woman who resides in Manchester, New Hampshire. The employer is a home health agency based in Amherst, New Hampshire. The claimant testified that she was employed by the employer as a full-time direct service professional providing home health care services. The claimant's wage claim and testimony indicate that the claimant believes she is owed \$675.00 in mileage reimbursement for the months of October and November 2021. The claimant had no documentation of her claim and testified that the figure was an estimate.

The claimant testified that she was terminated January 7, 2022, after failing to report to work that day or contact the employer. The claimant testified that she had been warned that after repeated unexcused absences the next unexcused absence would result in termination, which occurred after the claimant failed to report to work on January 7, 2022.

The employer testified that there was a company policy whereby employees were required to submit their mileage each week with their timesheets and were sent a weekly e-mail reminder. The claimant acknowledged awareness of the policy and that she had failed to follow it in October and November 2021. The claimant submitted mileage for December and January and was paid \$487.50 in mileage reimbursement with her last paycheck.

### DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that she is owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

RSA 275:43 I requires that an employer pay all wages due an employee within 8 days of the expiration of the work week.

RSA 275:43 I provides, in pertinent part:

1. Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis, or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis...

In this matter the claimant credibly testified that she was employed by the employer. However, her testimony that she was not paid mileage is not credible. The estimate submitted by the claimant cannot be verified against a mileage log. The claimant testified she did not record and submit her mileage in a timely fashion and could not create a mileage log for October and November 2021.

The employer's January 25, 2022 e-mail and testimony indicates the employer intends to pay accrued mileage if the claimant would simply submit a mileage log for reimbursement. The claimant again testified that she was unsure she would be able to substantiate her claim and requests that the Department simply award her what she seeks.

### DECISION

Based on the testimony and evidence presented, this Department finds the claimant has not met her burden to prove by a preponderance of evidence that she is owed additional wages. It is hereby ruled that this Wage Claim is **invalid**.

April 25, 2022  
Date of Decision

  
James W. McClain, Jr., Hearing Officer

JWM/nd