


STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


v.
7-Eleven

Case No.100783

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant did not appear
Michael Azmey, employer

NATURE OF DISPUTE: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:43 I - Weekly, Unpaid Bonus
RSA 275:44 IV- Employees Separated from Payroll
Before Pay Days, Liquidated Damages

DATE OF HEARING: May 4, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on January 18, 2022, alleging that he was owed \$519.00 in unpaid wages and \$519.00 in liquidated damages.

Notice of the claim was sent to the employer on January 21, 2022. The employer did not respond. The claimant requested a hearing February 9, 2022. The hearing was scheduled for March 10, 2022. Neither party appeared for the hearing. A 10-day show cause letter was issued March 14, 2022. The employer responded to the letter March 22, 2022, stating he did not attend because the hearing notice was addressed to the previous owner of the business. The claimant responded March 20, 2022, claiming he did not know about the March 10, 2022 hearing "in-time".

The hearing was rescheduled at the claimant's request. The notice was issued March 30, 2022. The hearing was scheduled for May 4, 2022. The employer appeared. The claimant failed to appear again.

A review of the file indicated that the notice of hearing was mailed to the claimant at the address he provided in the original claim and was not returned to the Department as undeliverable. It was therefore determined that the claimant received adequate notice of the hearing. After waiting 15 minutes for a delayed

arrival or other communication from the claimant, the hearing proceeded in his absence, consistent with administrative rule Lab 203.04.

The employer's representative was advised that it was the claimant's burden to prove the allegations in his claim. He was further advised that employer was not required to present rebuttal evidence unless and until the claimant presented testimony or evidence in support of his claim. The employer elected to testify.

FINDINGS OF FACT

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

The claimant asked for \$519.00 in owed wages and the equivalent amount in liquidated damages. No documentation of how that number was reached was provided.

The employer testified that the claimant did not work on the dates claimed in his wage claim because he had a habit of failing to report to work and was eventually fired for that reason. The employer corroborated the claimant's assertion in his wage claim that the claimant had made a "\$500.00 error", stating that he believed the claimant stole the \$500.00 but that he could not prove it.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that he was 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 provides, in-pertinent part,

I. 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...

Because the claimant failed to appear at the hearing and offer proof to support his allegations, it is not necessary to consider whether those allegations, if credited, would have been sufficient to support the wage claim under RSA 275:43, I.


The employer's un rebutted testimony that the claimant did not work on the dates in question is persuasive. In light of this testimony, the claimant failed to meet his burden of proving that he was not paid in accordance with RSA 275:43 I.

DECISION

The claimant failed to appear at the hearing and offered no evidence to support his allegations. The employer presented credible testimony that the claimant was not entitled his wages because he did not work on the dates in question.

The wage claim is found to be **invalid**.

May 20, 2022
Date of Decision


James W. McClain, Jr.
Hearing Officer

JWM/nd