

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]
v.

GNC Live Well

Case # 100789

DECISION OF THE HEARING OFFICER

APPEARANCES: [REDACTED] - Claimant
Employer – failed to appear

NATURE OF DISPUTE: RSA 275:44 IV — Employees Separated from Payroll
Before Pay Days, Liquidated Damages

DATE OF HEARING: March 23, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on January 18, 2021, alleging that she was owed \$1,310.40 in unpaid mileage expenses. The wage claim notice was issued January 21, 2022. The claimant requested a hearing February 27, 2022 and requested that she be awarded expenses and liquidated damages. The hearing notice was issued February 28, 2022. The employer responded on March 10, 2022, via e-mail, stating they had just received the hearing notice and had not received the wage claim. The employer contacted the Department on March 22, 2022, to report that the employer had mailed a \$1,310.40 check to the Department for the wage claim and advise that they would not appear for the hearing. The Department sent the check to the claimant March 22, 2022.

FINDINGS OF FACT

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

The claimant is employed as a manager of a GNC retail store by the employer. The employer has a policy of reimbursing mileage at 58.5 cents per mile. The claimant drove 2,240 miles in July, August and September 2021. The mileage reimbursement is \$1,310.40. The claimant requested reimbursement from the employer on September 13, 2021 and provided that documentation to the Department. The claimant provided documentation that showed she had not been paid as of February 22, 2022. The claimant requested the hearing February 27, 2022.

The employer's response indicates that the mileage reimbursement was inadvertent. The employer contacted the Department on March 22, 2022, to report that

the employer had mailed a \$1,310.40 check to the Department for the wage claim as requested under the wage claim notice and advised that they would not appear for the hearing. The Department sent the check to the claimant March 22, 2022.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that she 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 275:57 (Reimbursement of Employee Expenses) generally provides that an employee who incurs expenses in connection with his or her employment and at the request of the employer shall be reimbursed for the payment of the expenses within 30 days of the presentation by the employee of proof of payment. Here the employer did not contest that the expenses were due in response to a reimbursement request made on September 13, 2021.

Pursuant to RSA 275:43, V, employee expenses that are reimbursable constitute wages when due. The employer did not contest that the expenses claimed here were not paid until sometime in March of 2022, months after they were due.

Under RSA 275:44 IV, "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller." (emphasis added).

Our Supreme Court has construed "willfully and without good cause" as a unitary phrase, meaning "voluntarily, with knowledge that the wages are owed and despite financial ability to pay them." Ives v. Manchester Subaru, Inc. (N.H. 1985). In the same opinion, the Court stated, "A willful act is a voluntary act committed with an intent to cause its results. It is not, by contrast, an accident or an act committed on the basis of a mistake of fact."

That standard is satisfied in this case. The employer's conclusory explanation that its failure was "inadvertent" does not rise to the level of an accident or an act committed on the basis of a mistake or fact. The claimant is entitled to liquidated damages equivalent to the amount of wages owed, \$1,310.40.

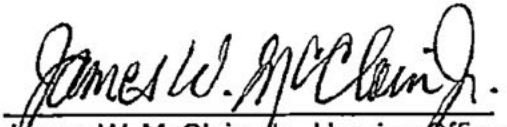
DECISION

Based on the testimony and evidence presented, this Department finds the claimant met her burden to prove by a preponderance of evidence that she is owed liquidated damages. It is hereby ruled that this Wage Claim is valid. The claimant is entitled to liquidated damages in the amount of \$1,310.40.

The employer is ordered to send a check in the amount of \$1,310.40 to this Department payable to ██████████ for the liquidated damages. The check is to be submitted to this Department within 30 days of the date of this order.

April 6, 2022
Date of Decision

JWM/nd


James W. McClain, Jr., Hearing Officer