

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████ ██████████

v.

The Cabinet Encounter

Case No. 100975

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ ██████████ Claimant
Zachary Rigali, Employer

NATURE OF DISPUTE: RSA 275:43 I – Weekly Unpaid Commissions
RSA 275:43 I – Unpaid Wages

DATE OF HEARING: May 18, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on February 6, 2022, alleging that she was owed an estimated \$15,000.00 in unpaid commissions. The wage claim notice was issued February 8, 2022. The employer responded February 18, 2022. The claimant requested a hearing and the hearing notice was issued April 7, 2022.

FINDINGS OF FACT

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

The claimant was employed as a design and sales representative by the employer from May 28, 2019 to June 18, 2021. The claimant estimates she is owed \$15,000.00 in unpaid commissions. The claimant testified she was paid \$22.00 per hour in salary plus commissions. The claimant testified that her employment with the employer was terminated by mutual agreement.

The claimant testified that she *believed* that commissions were earned as a percentage of *sales* made. The claimant testified that she *believed* that commissions up to the first \$100,000.00 of yearly *sales* were paid a commission of 10%, sales between \$100,000.00 and \$150,000.00 were paid a commission of

12.5% and that yearly sales over \$150,000.00 were paid a commission of 15%. *The claimant testified that she had no documentation of that policy.*

The employer's February 18, 2022 response and oral testimony was that *commissions were earned as a percentage of profit on the final, completed sale transaction* and that the first \$100,000.00 of yearly net profits on the claimant's sales were paid a commission of 10%, net profits between \$100,000.00 and \$150,000.00 were paid a commission of 12.5% and that net profits over \$150,000.00 on the claimant's sales were paid a commission of 15%.

The claimant attempted to introduce a 2020 profit and loss statement she stated was an accurate record of her commissions earned during 2020. The claimant testified that the commissions earned on that statement were less than 10% of the value of the sales she made during the year and that she believed she should have been paid more in commissions in 2020, based on her stated understanding of the commission policy. Under questioning from the hearing officer, *the claimant acknowledged she had never questioned her commission payments during 2020.*

The claimant testified that she was not provided an accounting of commissions earned in 2021. The claimant asserted that she had requested this information from the employer on numerous occasions. The employer testified that the commission policy was distributed to employees April 30, 2021, that employees were requested to sign the policy and that the claimant refused. *The claimant acknowledged in testimony that she did not sign the policy.*

The employer's February 18, 2022 submittal to the Department contains details of the claimant's 10 sales in 2021, 7 that have been finalized and 3 that have not. The claimant acknowledged seeing the document and did not contest it. The submittal contains dates the projects were final, the profit earned by the company, the commission paid to the claimant and the date the commission was paid to the claimant. All the payments were made within 8 days of the finalization of the sale.

The claimant was paid commissions in the amount of \$7,813.56 on sales profits of \$74,447.25. The commissions paid are slightly more than 10% of the profits earned on the sale by the employer.

The employer's submittal and testimony noted that the claimant would be paid for the projects that have not been finalized upon their completion and noted that the claimant had not deposited or cashed the checks and that they would have to be reissued. The claimant acknowledged that she had been paid the commissions cited in the employer's submittal but had not cashed or deposited the checks because she believed she had not been paid accurately.

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).

Concerning the claim for commissions, after hearing the evidence it is clear the claimant was confused about the policy and had no documentation supporting her contention that commissions were paid as a percentage of sales made. However, confusion does not necessitate a finding that the claimant is owed additional wages for commissions.

The claimant seeks \$15,000.00 in *estimated* commissions. The claimant was paid commissions in the amount of \$7,813.56 on sales profits of \$74,447.25. The commissions paid are slightly more than 10% of the profits earned on the sale by the employer. The commissions are slightly more than 50% of what the claimant seeks.

The employer's policy is that commissions are paid when the project is completed and final payment has been received. The claimant has not been paid for three outstanding projects because the employer has not received final payment. Upon final payment the claimant will earn more commissions.

The employer's unrefuted testimony and evidence is found to be credible and is adopted.

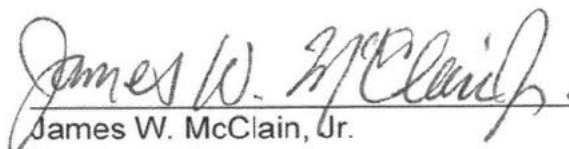
In light of this conclusion, the claimant did not meet her burden of proving that she was not paid in accordance with RSA 275:43 I.

DECISION

The employer presented credible evidence that the employer paid the claimant all commissions due.

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

June 3, 2022
Date of Decision


James W. McClain, Jr.
Hearing Officer

JWM/nd