

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

██████████  
v.  
SUBWAY

CASE NO. 101050

DECISION OF THE HEARING OFFICER

**Appearances:** ██████████ the claimant appeared Pro Se.  
The employer did not appear at hearing.

**Nature of Dispute:** RSA 275:43 I - Weekly, Unpaid Wages/Bonuses

**Claimant:** ██████████

**Employer:** Subway

**Witnesses:** ██████████ Claimant

**Date of Hearing:** May 3, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on February 10, 2022, asserting that she is due unpaid wages in the amount of \$609.75 for hours worked between January 12, and 20 2022.

The employer was notified by the Department of Labor (DOL) via mailing dated February 14, 2022. There was no response from the employer within the ten-day period provided by statute. This hearing was then scheduled accordingly for review of the claimant's claim for unpaid wages under RSA 275:43 I for May 3, 2022 at 8:30 am. The employer did respond to the request for hearing and requested a video hearing, on April 28, 2022. However, Michelle Ford, the employer's representative, did not give any explanation why this would be needed and only stated that she preferred not to have to appear in person. The claimant appeared in person at the appropriate date and time. The employer did not send a representative. After waiting 15 minutes as required by the DOL's administrative rules the hearing proceeded in the employer's absence.

### FINDINGS OF FACT

Ms. ██████████ is a ██████████ woman who was employed by Subway in the month of January 2022. Ms. ██████████ primary employment is as a cosmetologist. She started the job at Subway because her daughter was already working there and kept telling her how short staffed the restaurant was. She was paid \$15 per hour during her time at Subway and was paid weekly.

The restaurant was typically fairly busy due to a lack of staff. Ms. ██████████ daughter became too stressed by the work and quit shortly after Ms. ██████████ was hired.

Following her daughter's departure, Ms. ██████████ was treated poorly by Angel Chase, the store manager. Specifically, the claimant would come in for her shift to find that Ms. Chase had not prepared or refilled the food containers that sandwiches were made from. This would force Ms. ██████████ to do it and upset customers who had to wait longer for their food.

After this had happened several times, the claimant reached out to Jessica Mahoney, the area manager. Ms. Mahoney made an appointment to come speak with the claimant about the issues she was having. However, on the day of the appointment Ms. Mahoney did not show up.

The claimant worked 27.5 hours between January 12, and 18, 2022. She additionally worked 13.15 hours between January 19, and 20, 2022. These hours were tracked electronically and Ms. ██████████ showed the application screen which showed the hours she worked. This application also showed pay stubs electronically and did not have pay stubs for the specified pay periods. She voluntarily quit on January 20, 2022. She quit by leaving a note and closing the restaurant. The claimant admitted that the note had a rude message on it.

Following leaving she reached out to Ms. Mahoney via text message and was told there were "loses to the store" taken out of her final paycheck. When she enquired what losses specifically she was not given an answer.

The claimant presented several pictures on her phone (also emailed to the DOL and employer) which showed expire food and beverages still in the refrigerators at her Subway location several days past their date. She indicated that if she caused any losses to the store, destroying expired food is the only thing she could think they would be alleging. The claimant only destroyed or threw out expired food and did not damage to the store.

### DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she is owed unpaid wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

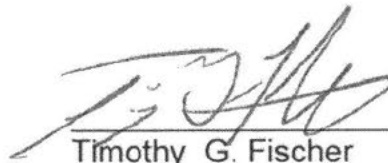
The claimant presented evidence that she worked hours and was not paid for them in the form of the data stored on the electronic application on her phone. The claimant also presented evidence that she had made a reasonable attempt to reach out to her former employer. The employer failed to appear and as such presented no evidence of the alleged losses the claimant caused.

Based upon a preponderance of the evidence, it is determined the claimant has met her burden and she should be paid for her work between January 12 and 20, 2022.

### DECISION

Based on the evidence and testimony presented, The claimant has showed by a preponderance of the evidence that wages were due for 40.65 hours worked between January 12 and 20, 2022 in the amount of \$609.75. The claimant's request for payment of unpaid wages is approved. It is found that the wage claim for unpaid wages is **valid**.

The employer is ordered to send a check in the amount of \$609.75 to this Department payable to ██████████ less any applicable taxes, for the unpaid wages to this Department within 30 days of the date of this order.



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Timothy G. Fischer  
Hearing Officer

Date of Decision: June 1, 2022

TGF/nd