

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.
National Aperture, Inc.

Case #101563

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ Claimant
Brad Winslow, for Employer
Attorney Gary Burt, Employer

NATURE OF DISPUTE: RSA 275:43 V — Weekly, Unpaid (Vacation Pay/Sick Pay/Personal Day) PTO

DATE OF HEARING: May 18, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on March 23, 2022, alleging that she was owed \$1,200.00 in unpaid vacation time. Notice of the claim was sent to the employer on March 25, 2022. The employer responded April 5, 2022. The claimant requested the hearing April 12, 2022. The hearing notice was issued April 18, 2022.

FINDINGS OF FACT

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

The claimant is a ██████████ woman who resides in Strafford, New Hampshire. The employer is a manufacturing concern based in Salem, New Hampshire. The claimant testified that she was employed for almost 2 years by the employer as a full-time assembler and was paid \$20.00 per hour by direct deposit biweekly. The claimant's wage claim documentation and testimony indicate that the claimant believes she is owed 60 hours in vacation and personal time off for a total of \$1,200.00.

The claimant testified that she was terminated on March 22, 2022 after giving a 2 week notice on March 15, 2022. The claimant testified that the employer paid her through March 25, 2022. The claimant testified that the employer had a paid time off (PTO) policy whereby 2 weeks' vacation and 1 week personal time was awarded to the employee on January 1 of each year. The claimant testified that the policy provided that

any unused vacation time would be paid to the employee upon separation regardless of the reason. No documentation of such a policy was provided.

The employer testified that the claimant gave one week's notice, with her last day to be March 25, 2022. The employer testified that the claimant reported to work on March 22, 2022, left at some point with her timecard and sent a facsimile of the card with a hand written note indicating she left work at 2 pm. The employer testified that the claimant was told she did not have to return to work for the rest of the week and would be paid through March 25, 2022.

The claimant worked 32 hours per week. The employer's written submittal indicated that the claimant was eligible for 2 weeks' vacation and 1 week personal time, or 96 hours per year. The employer's written submittal and testimony at hearing was that the vacation and personal time are *accrued* over the year and *not awarded* on January 1. The employer testified that the claimant had accrued 24 hours of PTO through March 22, 2022. The employer testified that unused PTO was paid out during the first quarter of the following year.

The employer's written submittal was that the claimant had accrued 16 hours of vacation time and 8 hours of personal time in 2022 by March 22, 2022 and had used 11 personal hours and 15.36 vacation hours in that time period, exceeding her accrued time by 2.36 hours. The claimant testified that between January 1 and March 22, 2022, she used and was paid for 19 personal hours and 8 vacation hours, a total of 27 hours. The employer testified at the hearing that the claimant used 11 personal hours and 22.4 vacation hours in that time period for a total of 33.4 hours. The claimant did not contest that assertion.

Regarding the employer's discrepancy between the 26.36 hours initially claimed and the 33.4 hours claimed at hearing, the employer's attorney acknowledged that the employer was lax in allowing the claimant to exceed her allotment but argued that does not mean the claimant should be paid for accrued time not yet earned. The employer did not submit documentation of the PTO policy.

The claimant argued that she should be paid for 60 hours for the remainder of her 2022 awarded time.

At this point the hearing was concluded.

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:

- 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...

In this matter the claimant credibly testified that she was employed by the employer. However, her testimony that she was owed PTO is not credible. The claimant's assertion that the employer's PTO policy *awarded* employees their yearly allotment of vacation and personal time on January 1 is not supported by documentation and cannot be verified. The claimant's assertion that the employer's PTO policy allowed for payment of awarded and unused PTO upon resignation is not supported by documentation and is not credible. Such a policy would provide an incentive for employees to resign on January 2. Therefore it is found that it is more likely than not that the PTO is accrued and not awarded.

The employer's written submittal was that the claimant had accrued 16 hours of vacation time and 8 hours of personal time in 2022 by March 22, 2022 and had used 11 personal hours and 15.36 vacation hours in that time period, exceeding her accrued time by 2.36 hours. The claimant testified that between January 1 and March 22, 2022, she used and was paid for 19 personal hours and 8 vacation hours, for a total of 27 hours. It is noted that the numbers are nearly equivalent.

The employer's assertion that vacation time and personal time are accrued is credible. The employer's assertion that the claimant was paid for all accrued time due is credible and was not contested by the claimant. The claimant testified that between January 1 and March 22, 2022, she used and was paid for 19 personal hours and 8 vacation hours, for a total of 27 hours. The employer testified that the claimant used 11 personal hours and 22.4 vacation hours in that time period for a total of 33.4 hours. In either scenario, the parties agree that the claimant was paid for accrued time and then some, inadvertently, according to the employer.

The employer was lax in the accumulation and utilization of PTO. It is unclear as to why the employer would allow the claimant to use more time than she had accumulated. However, it does not follow from such laxity that the claimant should prevail in her claim.

Under RSA 275:43 V, "Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, *when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due*" (emphasis added).

It is found that the claimant was paid for all accrued vacation and personal time.

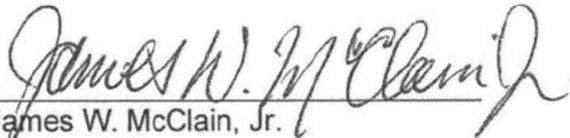
The claimant has not shown that PTO was awarded on January 1 and paid out upon resignation. Therefore, it is found that the claimant is not entitled to 60 hours' vacation and personal time.

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**.

June 6, 2022
Date of Decision


James W. McClain, Jr.
Hearing Officer

JWM/nd