

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

██████████  
v.

BURNDY-HUBBELL

CASE NO. 101564

DECISION OF THE HEARING OFFICER

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

**Nature of Dispute:** RSA 275:43 V - Weekly, Unpaid Vacation Pay  
RSA 275:43 V - Weekly, Unpaid Sick Pay

**Employer:** Burndy-Hubbell

**Witnesses:** ██████████ Claimant

**Date of Hearing:** May 12, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on March 24, 2022, asserting that he is due unpaid wages in the amount of \$3,000.00 for vacation and sick time he accrued but has not been able to use.

The employer was notified by the Department of Labor (DOL) via mailing dated March 25, 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 V for May 12, 2022 at 9:45 am. The employer did not respond to the request for hearing. 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

Mr. ██████████ is a ██████████ year-old who began work at Burndy-Hubbell on March 4, 2020. See page 13. He works in the facilities maintenance department and his pay rate is \$25 an hour. See page 12. He was injured at work on August 18, 2020 and has been out of work since then. He has since reached maximum medical improvement and is limited to sedentary work only.

The claimant's exhibits included pages from the employee handbook which deal with the accumulation of vacation time. The handbook states: "All regular full-time employees are eligible for vacation time. Employees governed by a Collective Bargaining Agreement are subject to the provisions in their Agreements. Each year beginning on January 1, regular full-time employees are eligible to earn vacation days. Eligibility is determined by the employee's years of service, according to the following: On January 1 of each year after hire: 1 to less than 5 years 2 weeks (10 days)" See page 1. The handbook goes on to state: "Newly-hired employees begin to earn vacation on their date of hire, to be used in their first year of employment, according to the following schedule:... February/March 9". See page 1-2. The handbook indicated that vacation days do not roll over. See page 2. The handbook further states: "Leave of Absence and other Inactive Status An employee on a formal inactive status as of January 1 (e.g. company authorized medical/personal leave of absence) will not be eligible for vacation accrual for that calendar year until returning to active employment....•Vacation days are earned on a prorated basis during the calendar year of eligibility, at the rate of one-twelfth (1/12) for each fully completed month of service. Vacation may be taken with company approval, before it is fully earned." See page 3.

The claimant presented a screenshot of his profile page on the employer's intranet. This shows his "Employee Group" as: "Perm/Active – FT". See page 4. The employee status at the top of the page states: "Unpaid Leave". This screen also shows a leave of absence start date of "May 01, 2020". See page 4. The claimant stated this date is incorrect and he has no idea where it came from as worked up until his August 18, 2020 date of injury.

A pay stub from the employer's payroll system dated May 13, 2022 documented 80 hours of accrued vacation time and 40 hours of sick time. This was for the pay period of April 24, 2022 through May 7, 2022. See page 5.

The claimant sent e-mails to Amela Suljic, his "HR Business Partner" per page 9, on March 17, and 22, 2022 as well as on April 7 and 18, 2022. See page 14-17. There was no evidence submitted that Ms. Suljic ever replied to the e-mails.

### **DISCUSSION AND CONCLUSIONS**

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he 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 argued that he has accrued vacation and sick hours and has not been able to utilize them. The claimant further argued that since there is nothing in the handbook which addresses the conflicting employment statuses listed on his profile page he should be considered "active" under the vacation policy. The claimant finally argued that he had made a reasonable attempt to reach out to the employer to resolve this issue with no response.

The claimant's argument that he should be considered an "active" employee under the vacation policy is persuasive. The claimant's profile page on the employer intranet shows he is considered on "Unpaid Leave", but also an "Active - FT" employee. See page 4. The claimant also presented his paystub dated May 13, 2022 which shows he has 80 hours of available vacation time and 40 hours of sick time. See page 5. It is a reasonable conclusion that an inactive employee would not continue to have paystubs generated. It is also a reasonable conclusion that if the human resources/payroll departments considered Mr. ██████████ "inactive" they would be able to prevent the pay system from noting accrued vacation and sick time. Finally, the claimant reached out several times to the employer over approximately one month with no response. See pages 14-17. If the employer disputed the claimant was owed this pay due to his status a simple e-mail response could have settled this matter.

The claimant's argument that he has accrued vacation and sick hours and has not been able to utilize them is persuasive. The claimant presented his paystub dated May 13, 2022 which shows he has 80 hours of available vacation time and 40 hours of sick time. See page 5. There was no indication he had been able to utilize the listed hours.

Finally, the claimant's argument that he had made a reasonable attempt to reach out to the employer to resolve this issue with no response is persuasive. The claimant reached out several times to the employer over approximately one month with no response. See pages 14-17.

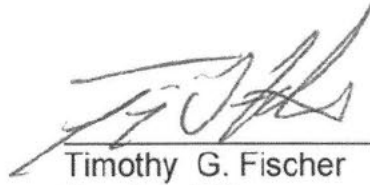
Overall, there has been a lack of response from the employer here to refute the claimant's position. The employer did not respond to the notice of wage claim sent by the DOL. The employer did not respond to the claimant's numerous e-mails. Finally, the employer did not appear at hearing to dispute the claimant's contentions with evidence or testimony.

Based upon a preponderance of the evidence, it is determined the claimant has met his burden and he should be paid for his accrued vacation and sick time.

### DECISION

Based on the evidence and testimony presented, the claimant has showed by a preponderance of the evidence that wages were due for 40 hours of accrued sick time and 80 hours of accrued vacation time. 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 \$3,000.00 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 2, 2022

TGF/nd