

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Marshall's

Case #101613

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ Claimant, telephonically
Employer failed to appear

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

RSA 275:48 I, II – Withholding of Wages, Illegal Deductions from Wages (Health Insurance Premiums and Failed Obligation) - REMOVED

DATE OF HEARING: June 10, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on March 28, 2022, alleging that she was owed \$1,257.62 in unpaid vacation, sick and personal time and illegal 401(k) deductions. The wage claim notice issued on March 28, 2022. The employer failed to respond. The claimant requested the hearing and the hearing notice issued May 20, 2022. The claimant was paid for unused vacation time and reimbursed for the unauthorized 401(k) deductions prior to the hearing. By agreement of the claimant RSA 275:48 I/II was removed as an issue.

The employer failed to appear for the hearing. A review of the file indicated that the notice of hearing was mailed to the employer at the address provided in the original claim and was not returned to the Department as undeliverable. It was therefore determined that the employer received adequate notice of the hearing. After waiting 15 minutes for a delayed arrival or other communication from the employer, the hearing proceeded in their absence, consistent with administrative rule Lab 203.04.

FINDINGS OF FACT

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

The claimant is a ██████████ who resides in Nashua, New Hampshire. The employer is a national retail department store. The claimant's workplace was in Nashua. The claimant testified that she was employed as a retail associate and was paid \$13.50 per hour weekly via direct deposit.

The claimant's exhibit and testimony indicate she was terminated Tuesday March 22, 2022 with prior notice regarding her performance. A pay stub for the week ending March 25, 2022 shows a balance of 30 vacation hours, 14 personal hours and 22.86 sick hours. The claimant testified that she had been paid her last two days' wages and 30 hours vacation pay and was reimbursed separately for the unauthorized 401(k) deductions. The claimant produced documentation corroborating those payments.

A pay stub for the week ending April 1, 2022 shows a balance of 14 personal hours and 22.86 sick hours, which is the subject of the wage claim. The claimant testified that she did not know whether the employer had a policy which paid out unused sick and personal time upon termination. The claimant testified that the store's assistant manager told her that terminated employees were not entitled to sick and personal time payout upon termination.

The employer did not appear and no documentation of the employer's PTO policy was submitted.

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...

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).

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 is not supported by documentation. The fact that the claimant was paid for unused vacation time does not allow the inference that the claimant would or should be paid for unused sick and personal time.

The claimant testified that the store's assistant manager told her that terminated employees were not entitled to sick and personal time payout upon termination. Absent a showing that the employer had a policy or procedure in place that paid terminated employees for unused sick and personal time, the claimant cannot prevail on that issue.

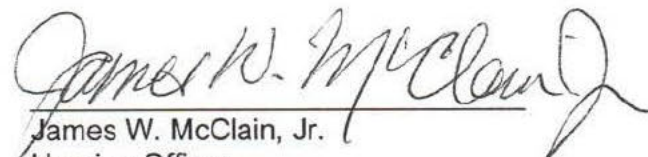
The claimant has not shown that she was owed PTO to be paid out upon resignation. Therefore, it is found that the claimant is not entitled to sick or personal paid time off.

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 PTO.

It is hereby ruled that this Wage Claim is **invalid**.

July 1, 2022
Date of Decision


James W. McClain, Jr.
Hearing Officer

JWM/nd