

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.
Super Shoes

Case #101912

DECISION OF THE HEARING OFFICER

APPEARANCES: [REDACTED] Claimant
Jamie Thomes, for Employer, telephonically

NATURE OF DISPUTE: RSA 275:43 I — Weekly, Unpaid Wages
RSA 275:43-b — Weekly, Unpaid Salary
RSA 275:44 IV — Employees Separated from Payroll
Before Pay Days, Liquidated Damages

DATE OF HEARING: May 31, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on April 13, 2022, alleging that he was owed \$513.83 in unpaid wages and salary. The employer responded to the wage claim notice on April 20, 2022. The hearing notice was issued May 11, 2022 and the hearing scheduled accordingly.

FINDINGS OF FACT

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

The claimant is a [REDACTED] who resides in Manchester, New Hampshire. The employer is based in Manchester, New Hampshire. The claimant testified that he was employed for 17 years by the employer as a store manager and was paid a weekly salary of \$987.77. The wage claim documentation and testimony indicate that the claimant believes he is owed \$513.83.

The claimant and the employer testified that the claimant was salaried employee and was terminated on April 5, 2022. The pay period ended April 9, 2022, which was a Saturday. The claimant received his last paycheck April 13, 2022 in the amount of \$466.94, which was prorated to April 5, 2022.

The employer testified that the claimant was terminated for cause, specifically that the claimant had allowed a colleague to remove merchandise from the store before payment in violation of store policy.

Documentation was provided in the form of an Employee Corrective Action Record dated April 6, 2022 which indicated that the claimant acknowledged his awareness of the policy, his awareness of the incident on April 1, 2022 and his failure to address it or report the incident to his supervisor. The record has an "Employee Comments" section which reads "None at time of action."

The claimant testified he did not know he was terminated for cause until he saw the employer's exhibit. The employer testified that the employer has a policy of progressive discipline. The employer testified that after 17 years the claimant should have been thoroughly aware of the policy. There was no testimony regarding the claimant's prior disciplinary record. The employer testified that the claimant was terminated due to professional ethical concerns. The claimant did not contradict that testimony.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that he 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 provides, in pertinent part, "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..."

The claimant testified that he was terminated on April 5, 2022 and received his last paycheck on April 13, 2022. The claimant received his last paycheck 8 days after termination, out of compliance with the statute.

RSA 275:43-b requires that a salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked. RSA 275:43-b II allows employers to prorate salary to a daily basis when an employee is terminated for cause.

The employer prorated the claimant's last paycheck. The employer's response to the wage claim explains that the employer's understanding was that an employee's salary could be prorated to a daily basis where the employee was terminated for cause. The employer's understanding is correct. Here, the evidence demonstrated that the claimant admitted violating a policy which he had a duty to adhere to in his employment. The claimant admitted he had failed to communicate the policy to his subordinate, had

knowingly allowed the subordinate to violate the policy and failed to report both violations to the employer as required under the terms and conditions of his employment.

Under RSA 275:44 IV, "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller;" (emphasis added).

Under RSA 275:44 I, "[W]henver an employer discharges an employee, the employer shall pay the employee's wages in full within 72 hours" (emphasis added).

Regarding the question of liquidated damages, it is found that the employer failed to pay the claimant his wages within 72 hours as required. The claimant was terminated April 5, 2022. His salary was prorated to reflect payment up to the time of termination. The claimant should have been paid within 72 hours, or by Friday April 8, 2022. The claimant was paid April 13, 2022, which is 4 business days after April 8, 2022.

The claimant was paid \$466.94 for his last prorated work week. Ten percent of \$466.94 is \$46.70. \$46.70 multiplied by 4 business days equals \$186.80.

DECISION

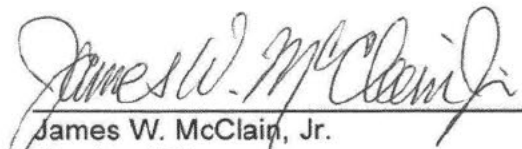
Based on the testimony and evidence presented, this Department finds the claimant has not met his burden to prove by a preponderance of evidence that he is owed additional wages or salary.

Based on the testimony and evidence presented, this Department finds the claimant has met his burden to prove by a preponderance of evidence that he is owed liquidated damages.

It is hereby ruled that this Wage Claim is **partially valid and partially invalid**.

The employer is directed to send a check in the amount of \$186.80 payable to ██████████ within 30 days of the date of this order.

June 23, 2022
Date of Decision


James W. McClain, Jr.
Hearing Officer

JWM/nd