

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Stryker Corp.

Case No.: 101947

DECISION OF THE HEARING OFFICER

Appearances: ██████████ Claimant.

Employer did not appear.

Nature of Dispute: RSA 275:43 I – Weekly, Unpaid Bonus

Date of Hearing: June 9, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages due to him. Specifically, the claimant asserts that he is owed \$33,600.00 in bonus payments.

The claimant filed a Wage Claim with the Department on April 8, 2022. A Notice of Wage Claim was forwarded to the employer on April 19, 2022. The employer failed to respond. The hearing request date was May 4, 2022. Hearing Notices were forwarded to the parties on May 17, 2022.

The employer failed to appear. 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 claimant resides in ██████████ New Hampshire. Stryker Orthopedics is based in Mahwah, New Jersey. The claimant worked as a Joint Replacement Sales Representative for the employer from December 12, 2018 to September 28, 2020 out of the employer's Manchester, New Hampshire office. The claimant provided documentation and testimony of his December 12, 2018 employment offer and the employer's offer of a 2% group bonus on 2019 gross profit if the annual sales quota is met. The claimant was paid \$120,000.00 annually.

The claimant's wage claim and testimony were that the 2019 quota was met and the bonuses disbursed in February 2020. The claimant testified that he did not receive his bonus but that his coworkers did. The claimant testified that the 2019 quota was \$16,800,000.00. The claimant testified that the bonus was based on 10% profit on the \$16,800,000.00 or \$1,680,000.00. Two percent of \$1,680,000.00 is \$33,600.00. The claimant testified that he was not given a reason why he did not receive his bonus.

The claimant provided a copy of his December 12, 2018 employment offer on company letterhead. The letter confirms the 2% bonus upon meeting the annual quota and the \$120,000.00 salary. The claimant testified that the terms of his December 12, 2018 employment offer were only good for one year. The second to last paragraph of the letter reads,

"While this letter is intended to summarize your transfer, it shall not be used to interpret or in any way govern the terms of your employment relationship with Stryker. The aforementioned statements of Company policy, practices, and benefits do not constitute the terms of an employment contract, either express or implied. *Further, the Company maintains the right to change its policies and procedures without notice*" (emphasis added).

The claimant testified that in 2020 he was paid by commission only and no longer received his \$120,000.00 salary. The claimant testified that the situation was complicated by "covid" because elective surgeries were cancelled and sales personnel were not allowed to enter hospitals. The claimant testified that he was terminated September 28, 2020. The claimant did not explain the circumstances of his termination.

The employer failed to respond and failed to appear. At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional 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.

RSA 275:43 I considers bonus pay to be wages, when due, if a matter of employment practice or policy, or both. RSA 275:43 I requires that an employer pay all wages due to an employee within 8 days of the expiration of the work week. The employer did not do so.

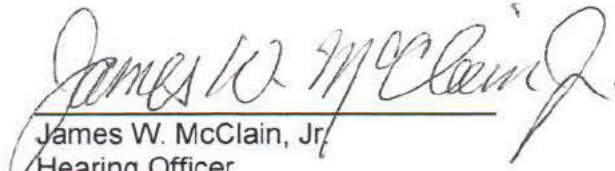
After reviewing the testimony and evidence, the claimant's wage claim is found to be unpersuasive. The claimant testified that he met the criteria of the bonus offer and has not been paid the offered bonus. However, no documentation was provided to show that the sales quota was met. No documentation was provided to show that the claimant did not receive his bonus or the reason he did not. No documentation was provided to show the claimant requested the bonus or a reason for not receiving the bonus. Without additional evidence the claimant cannot meet his burden of proof in this matter.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, this Department finds that the claimant failed to prove by a preponderance of the evidence that he was not paid his full wages.

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

Date of Decision: July 6, 2022


James W. McClain, Jr.
Hearing Officer

Original: Claimant
cc: Employer

JWM/nd