

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

New World Water & Advanced Technologies, L.L.C.
CASE #101970

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Ellen and Sam Meekins, self-represented, on behalf
of the employer (did not appear)

NATURE OF DISPUTE: RSA 275:43-b — Payment of Salaried Employees
(unpaid salary)
RSA 275:43, I — Weekly (unpaid bonus) (added at
hearing)*
RSA 275:44, IV — Employees Separated from Payroll
before Pay Days (liquidated damages) (withdrawn at
hearing)
RSA 275:43, V — Weekly (unpaid employee
expenses)
Statutory interest

DATE OF HEARING: September 13, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claim was filed on April 18, 2022. The claimant alleged that he was employed on salary as Director of Sales and Business Development. He advanced three wage claims: First, that he worked for the employer for three months and never received a paycheck; the amount of unpaid salary was \$49,998.98. Second, that he was promised a bonus of \$40,000.00 in

* The Department initially interpreted the second claim as one for liquidated damages and therefore included RSA 275:44, IV on the hearing notice. However, at the hearing, the claimant confirmed that his second claim was based on a promised bonus or incentive payment in exchange for his continuing to work despite the employer's failure to make payroll on time. He was not making a claim for liquidated damages. The liquidated damages claims was therefore withdrawn and the bonus claim was added.

compensation for the delay in receiving his regular salary. Third, that he did not receive reimbursement for his unpaid expenses totaling \$650.00. The claimant also requested an award of statutory interest on the amount he was owed.

Notice of the claim was mailed to the employer on April 20, 2022. The employer's owners, Ellen and Sanford Meekins, objected to the claim on April 26, 2022. The claimant requested a hearing on July 23, 2022. By letter of September 6, 2022, Ellen and Sanford Meekins notified the Department that they had chosen not to attend the September 13, 2022 wage hearing, stating, in pertinent part:

We have chosen not to attend the September 13, 2022, Wage Hearing as there is no reason to waste the board's time or anyone else's.

The board has already heard our wage hearing in favor of ██████████ — Case 000102553, and we see no reason that the board would be in favor of New World Water & Advanced Technologies, L.L.C.

So, we waive the decision to challenge the claimant's claim of \$90,000. We do not have the means to pay Mr. ██████████ currently, as we are currently on the NH EBT Food Program's monthly allocation to just survive our current financial situation.

The employer's owners did not appear for the hearing and, pursuant to the above letter and Department administrative rule Lab 203.04, the hearing proceeded in their absence.

FINDINGS OF FACT

The following findings are based on the testimony of the claimant, his exhibits, and matters of record in the Department file. The claimant acknowledged under oath that his written submissions to the Department were true and accurate to the best of his knowledge and belief, and his statements contained therein are treated as part of the testimony in the case.

For ease of reference, labels were assigned to the claimant's exhibits, as follows:

<u>Reference</u>	<u>Description</u>
CI-Exh. 1	Offer letter
CI-Exh. 2	Text message exchange July 21–22, 2021
CI-Exh. 3	Text message conversation May 5–November 10, 2021
CI-Exh. 4	Emails to or from claimant

Claimant is 48 years old and lives in Manchester. He has a bachelors degree in computer science. He has worked as a business development manager in the fields of IT and data storage. He worked for IBM for some 18 years, then for three other technology companies, for six, five, and 10 years, respectively. He has lived in New Hampshire since 2000.

in 2021, he was offered a job working for the employer as executive director of sales and business development, at an annual salary of \$200

thousand. The salary was comparable to what he had been making, but he believed the job had the potential for much greater income, specifically, the promise in the offer letter of a \$2 million bonus "upon completion of 5-years of service excellence in the company." CI-Exh. 1.

Claimant accepted the offer and started working on May 10. He was in charge of the Gatestor sales team and was responsible for acquiring and retaining customers. Claimant's primary point of contact with the employer was its president, Denis Emond.

Claimant was supposed to be paid every two weeks by direct deposit, with payday the day after the pay period ended. He did not receive a paycheck at the end of the first two weeks. He was told that the company was still setting up an arrangement with a payroll company and that there were other technical difficulties with access to funds and that these problems would soon be resolved. As the weeks went by, he still received no paychecks. Other employees also were not being paid.

He testified that during a conference call on June 25, in which he and other employees participated, one of the owners stated that the company would soon catch up with payroll arrears and would also offer an additional bonus of \$40 thousand in consideration of the payroll being late. Claimant said he had made and kept a recording of the call.

On July 25, he was informed by Denis Emond that owner Sam Meekins had shut down the sales team of which he was a part. CI. Exh. 2. At that point, he considered that he was no longer an employee. He testified that he had been doing his job during the entire time—May 10 to July 22—working with clients, developing new clients, and preparing estimates.

He was never paid his salary for the period in which he was employed, from May 10 to July 22, nor did he receive the \$40 thousand bonus he had been promised on June 25. He also testified that he was never reimbursed for business-related expenses totaling \$650.00.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that he was 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).

Claim for unpaid salary. New Hampshire law generally requires that salaried employees “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, I.

A witness's testimony need not be corroborated to be credited, so long as it is found to be reliable and is not otherwise rebutted. Claimant's exhibit 1, the offer letter, does corroborate his testimony as to the job description, salary, biweekly pay periods, and start date. Claimant's exhibit 2 corroborates his testimony that the sales team he was in charge of was shut down on July 22, 2021. Claimant's exhibit 3, consisting of text conversation with Denis Emond from May 5–November 10, 2021 was somewhat difficult to understand due to the use of abbreviations and shorthand. However, it does provide some documentary support for the claimant's testimony that the company was not making payments and was holding out the promise that the money would be coming in eventually. Claimant's exhibit 4, consisting of a variety of emails spanning the period from May to July, tends to corroborate his testimony that he was engaged in work activities during this time. It is found that the claimant met his burden of proof with respect to the claims for unpaid salary.

The claimant worked from May 10 to July 22. Using May 10 as the start of the first biweekly pay period, there were six pay periods in which he worked (i.e., periods beginning May 10 & 24, June 7 & 21, and July 5 & 19. Pursuant to RSA 275:43-b, he was entitled to his full salary for each of these pay periods. An annual salary of \$200 thousand equates to a biweekly salary of \$7,692.31. Multiplying this by six gives a total salary earned of \$46,153.86.

Claim for unpaid bonus. A bonus award, when due, is considered part of wages, pursuant to RSA 275:42, III. “When due” is a reference to contingencies specified in the description of the bonus offer that the employee needs to meet in order to be eligible for the bonus. It was the claimant's burden to prove that the employer offered him a bonus and that he met the contingencies entitling him to receive it.

Claimant's testimony regarding the bonus offer that was made in a telephone conference call with all employees and the owners participating, was not accompanied by corroborating evidence. Nevertheless, the claimant's sworn testimony that there were numerous witnesses to the conversation, and the employer's decision not to challenge his wage claim, adds a degree of credibility. It is found that the claimant met his burden of proving that he was offered a \$40 thousand bonus and that the bonus was due in his final wages.

Expense claim. Pursuant to RSA 275:57 an employee's right to expense reimbursement within 30 days of presenting proof of payment is conditioned upon four predicates: (1) that the expenses were incurred in connection with employment, (2) at the request of the employer, (3) not of the kind normally

borne by the employee as a precondition of employment, and (4) not otherwise compensated for by the employer.

With regard to the unreimbursed expenses, claimant was asked how he arrived at \$650.00. He did not have a record of his expenses. He also did not recall submitting an expense claim to the employer for reimbursement. Without some itemization, it is found that the claimant did not meet his burden of proving that he incurred \$650.00 in reimbursable expenses.

Claim for interest. Pursuant to RSA 524:1-b, simple interest begins to accrue from the date of writ (which in this case corresponds to the date the claim was filed, April 18, 2022), and continues through the date of judgment, September 23, 2022. Galloway v. Chicago-Soft, Ltd. (N.H. 1998). Using the applicable annual interest rate, set via RSA 336:1, the total award of interest is as follows:

Unpaid salary	\$46,153.86
Unpaid bonus	<u>\$40,000.00</u>
Principal amount:	\$86,153.86
Interest accrued from April 18 through September 23, 2022 (159 days) at 2.00 percent per annum	\$ 750.60
Total unpaid wages plus interest	\$86,904.46

DECISION

Claimant having proved that he is owed unpaid wages (salary plus bonus) totaling \$86,153.86, the claims under RSA 275:43-b and RSA 275:43, I are ruled **valid** to that extent. To that amount, statutory interest of \$750.60 is added.

Claimant having failed to prove that he is owed \$650.00 in unpaid reimbursable expenses, the claim under RSA 275:43, V is ruled **invalid**.

The employer is hereby ordered to send a check to the Labor Department, payable to Dukejohn ██████████ in the amount of \$86,904.46, less applicable deductions for the unpaid wage component of \$86,153.86 but not for the statutory interest, within 30 days of the date of this Order.

September 23, 2022
Date of Decision


George A. Stewart, Hearing Officer

GAS/nd