

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

T Antaya, LLC.

Case No. 102026

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] claimant

Employer did not appear

Nature of Dispute: RSA 275:43-b- Payment of salaried employees, unpaid salary

Date of Hearing: June 23, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all wages due as required under New Hampshire law. Specifically, the claimant filed a Wage Claim with the Department April 21, 2022, asserting unpaid wages in the amount of \$50,000.00 from January 1, 2022 to March 15, 2022.

The wage claim notice was issued April 26, 2022. The employer did not file a response. The claimant requested a hearing on the contested wages on April 22, 2022. The Notice of Hearing issued June 1, 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 employer is an electrical engineering company based in Somersworth, New Hampshire. The claimant testified, he began working for the employer in 2014. He currently works remotely as an electrical engineer from his home in Exeter, New Hampshire. The wage claim and testimony were that the claimant has a yearly salary of \$200,000.00 and when paid would receive \$13,000.00 net wages monthly in two wire transfers of \$6,500.00 on the 15th and the 30th of each month. The claimant testified he last received a wire transfer from the employer at the end of March.

The claimant testified that the employer stopped paying salary in January 2022 but gave a partial payment to the claimant in March 2022 that the claimant testified the employer called "a favor". The claimant testified he is not seeking wages from April 2022 to the present because the employer has always been good to him. The claimant referred to the employer as "Doctor Antaya". The claimant testified that he still works for the employer and has not been terminated. The claimant testified that he knows of another colleague who has not been paid.

The claimant calculated his unpaid wages as \$50,000.00. However, in testimony the claimant stated that he had not been paid for six (6) pay periods. The claimant testified his net pay each period was \$6,500.00. $\$6,500.00 \times 6 = \$39,000.00$.

The claimant read into the record what he testified were text messages between he and the employer on April 20, 2022 in which the employer wrote of selling airplanes to stave off creditors rather than pay employees. The claimant testified that was the moment he realized the situation had become untenable and he filed the wage claim the next day, April 21, 2022. The text messages indicated that the employer considered furloughing employees in February 2022. The claimant testified his last contact with Doctor Antaya was on May 26, 2022.

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 requires that an employer pay all wages due an employee, on time, on paydays designated in advance. In this case, there is no question that the claimant is a salaried employee. The claimant and the employer agreed to a yearly salary of \$200,000.00. In exchange for this money, the claimant was not required to "clock in" or "clock out" at any certain time.

A salaried employee is entitled to his/her entire salary for a pay period unless he/she terminates his/her own employment or is terminated for cause by the employer. See *RSA 275:43- b (II)*. There is no evidence the claimant was employed or terminated by the employer. The unpaid wages have not been documented.

The notice of hearing indicates that the claimant seeks unpaid salary. The employer hired the claimant at a rate of pay the employer specified and made incomplete payment to the claimant which the employer termed "a favor". This is prima facie evidence of the ability to pay the wages promised.

The employer failed to appear for the hearing or file an objection. Therefore, there is no evidence that the employer lacks the ability to pay wages. The business kept operating while the employer promised and failed to pay the claimant's wages in full. This was a conscious decision. It was a voluntary act that did not proceed from mistake or inadvertence. The employer's failure to pay the claimant's outstanding wages before the hearing was a conscious decision.

The claimant's testimony that he was not paid in a timely fashion as required is persuasive. The claimant was to be paid twice monthly. The employer's April 20, 2022

text messages to the claimant specifically acknowledge that the employer had not paid the claimant his salary in full at that time. The employer did not respond to the wage claim or appear at the hearing to dispute the monies owed.

The wage claim reads in its entirety,

“Salary of \$200k. one paycheck of \$6500 has been issued this year, then, \$50k is from 6 unpaid bi-monthly pay periods that have passed.”

The claimant’s arithmetic appears to be incorrect. The claimant testified he was paid \$6,500.00 net on the 15th and 30th of each month. $\$6,500.00 \times 6 = \$39,000.00$.

DECISION

Based on the testimony and evidence presented, the Department finds the claimant met his burden to prove by a preponderance of evidence he is owed additional wages. The claimant is entitled to receive unpaid wages in the *net* amount \$39,000.00.

It is hereby ruled that **this Wage Claim is valid in part.**

The employer is ordered to send a check to this Department payable to ██████████ in the amount of \$39,000.00 within 30 days of the date of this order.

Date of Decision: July 20, 2022


James W. McClain Jr.
Hearing Officer

Original: Claimant
cc: Employer

JWM/nd