

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.
UG2

Case #102042

DECISION OF THE HEARING OFFICER

APPEARANCES: [REDACTED] Claimant
Angela Fiandaca, Julio Romera, for Employer

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

DATE OF HEARING: June 22, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on April 21, 2022, alleging that he was owed \$2,240.00 in unpaid wages, vacation, sick and personal time. The claim was translated into English by the Department. Notice of the claim was sent to the employer on April 28, 2022. The employer responded May 6, 2022. The claimant requested the hearing May 14, 2022. The hearing notice issued May 25, 2022.

The claimant appeared for the hearing accompanied by someone who stated he was to translate for the claimant as the claimant's primary language is Spanish. The employer's representative, Mr. Julio Romera, did not object as he is fluent in Spanish. The translator was sworn in at the beginning of the hearing and the hearing proceeded with their assistance.

FINDINGS OF FACT

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

The claimant testified in Spanish; however, he did reply to some questions asked in English in English.

The claimant is a 38-year-old man who resides in Nashua, New Hampshire. The employer is a building maintenance and cleaning concern based in Boston, Massachusetts. The claimant's workplace was in Nashua. The claimant testified that he was employed for slightly over 1 year by the employer as a full-time cleaner and was paid \$17.50 per hour weekly.

The claimant testified that he resigned on April 8, 2022 with no notice because he received a progressive discipline notice on April 7, 2022. The claimant offered the progressive discipline notice as evidence at hearing. The claimant's wage claim is for 1 week of salary, 4 days sick pay, 1 week vacation pay and 2 personal days.

The employer's exhibits show that the claimant was hired on April 3, 2021 and resigned April 8, 2022. The claimant did not dispute the record. The employer's documentation and testimony indicated that the paid time off (PTO) policy has different applications with respect to vacation pay, sick pay and personal time. Documentation of the policy was provided. The employer's written submittal shows the details of the PTO policy.

Regarding the claim for one week's wages, the employer's testimony and written submittal was that the payroll system is one week in arrears, meaning that the claimant was paid on April 15, 2022 for the week ending April 8, 2022 (the claimant resigned on April 8, 2022). The claimant did not contradict that testimony.

Regarding vacation pay, the PTO policy clearly states that employees are only eligible for one week of vacation pay *after* completion of 1 year of service. The claimant worked 1 year and 5 days and accumulated 5 vacation days. The policy contains the caveat that payout of vacation time is restricted to employees who provide 2 weeks' notice and work the 2 weeks. The claimant did not provide 2 weeks' notice. The claimant did not contradict the documentation.

Regarding sick pay, the policy clearly states that an employee can accrue 4 sick days per year and that unused sick days cannot be carried into the next year. The documentation shows that the claimant accrued two sick days and used 5 hours. The policy reads in relevant part, "Employees will not be paid for any unused accrued sick time at termination or after a resignation notice is received". The claimant did not contradict the documentation.

Regarding personal days, the policy indicates that employees are given one personal day annually. The employer's policy reads in relevant part, "Unused personal days will not be paid upon termination". The claimant did not contradict the documentation.

The employer's documentation included the claimant's signed acknowledgement of receipt and understanding of the employer's vacation, sick and personal time policies. The document was in English and Spanish. The claimant did not contradict the documentation. That document was dated July 22, 2021. The claimant signed the English version of the document.

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 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...

Here the claimant was paid his last week of wages (April 8, 2022) in the regular pay cycle on April 15, 2022. It is found that the claimant is not owed wages.

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 he was employed by the employer and had accrued PTO. However, his testimony that he is owed PTO is not credible. The claimant's assertion that the employer's PTO policy guaranteed PTO regardless of tenure, accrual or separation is not supported by documentation. The claimant's assertion that the employer's PTO policy allowed for payment of awarded and unused PTO upon resignation is not supported by documentation and is therefore not credible.

The claimant was employed by the employer from April 3, 2021 to April 8, 2022, one year and five days. Although the claimant had accumulated vacation time, it is found that the claimant was not eligible for vacation pay because he did not give two weeks' notice to the employer.

The employer's assertion that sick time and personal time are accrued is credible. The employer's assertion that the claimant was not paid for accrued sick and personal time because the employer's policy specifically precludes such a payout upon resignation or termination is credible. It is found that the claimant is not entitled to payment for accrued sick and personal time.

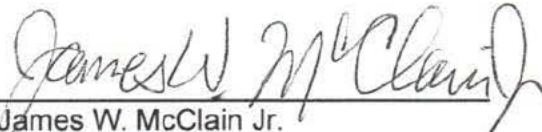
The claimant has not shown that he was owed PTO to be paid out upon resignation. Therefore, it is found that the claimant is not entitled to wages, vacation, sick or personal paid time off.

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 PTO.

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

July 20, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd