

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

Town of Ashland

Case No. 102540

DECISION OF THE HEARING OFFICER

APPEARANCES:

█ claimant

Heather Nehiley, Frank Conforti, Town of Ashland

Attorney Naomi Butterfield, Town of Ashland

NATURE OF DISPUTE:

RSA 275:43 V - Weekly Unpaid Vacation Pay/Personal Days/Insurance Buyout

RSA 275:44 IV – Employees Separated from Payroll Before Pay Days, Liquidated Damages

DATE OF HEARING:

August 17, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on June 6, 2022, alleging that she was owed \$1,717.92 in unused accrued vacation pay, \$381.76 for two unused personal days and \$277.97 for a prorated quarterly health insurance buyout in the second quarter of 2022 for a total claim of \$2,377.65. The claimant seeks the equivalent amount in liquidated damages. The wage claim notice was issued June 7, 2022. The employer responded June 14, 2022. The claimant requested a hearing June 14, 2022 and the hearing notice was issued July 22, 2022.

FINDINGS OF FACT

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

The claimant was employed as a utility department customer service representative by the employer from December 1, 2020 to April 22, 2022. The claimant was terminated by the employer April 25, 2022 for failure to report to work on April 22, 2022 after she was specifically told to report for work that day because she had failed to give adequate notice of her intention to use vacation time. The claimant testified that she did not report to work because of stress in the workplace, alleging malfeasance by the

town manager. Both parties agreed the claimant did not contest the termination under the applicable collective bargaining agreement.

The claimant's oral and written testimony indicated that she believed she was owed \$1,717.92 for 72 hours in unused accrued vacation pay, \$381.76 for two unused personal days and \$277.97 for a prorated quarterly health insurance buyout in the second quarter of 2022 for a total claim of \$2,377.65.

The employer's handbook and the corresponding collective bargaining agreement were submitted as evidence.

Regarding the health insurance buyout of \$277.97, the claim reads in relevant part:

"I worked 22 days out possible 91 days in quarter 2 of 2022. Under the Health Insurance Buyout Program, I had been reimbursed \$1149.80 (sic) per quarter. Pro-rated for 22 days, should receive a reimbursement of \$277.97."

The claimant started work on December 1, 2020. She received a reimbursement for the last quarter of 2020 on December 26, 2020. The claimant testified she believed this was a partial prorated reimbursement. The claimant requested reimbursement for the second quarter of 2022 on March 31, 2022. The second calendar quarter of 2022 began on April 1, 2022.

The reimbursement policy allows for reimbursement of 25% of the HMO premium paid for health coverage. The policy is silent on prorated reimbursement and reimbursement for separated employees. The employer testified that reimbursements were not prorated as a matter of policy and that the reimbursement the claimant received on December 26, 2020 reflected the fact that the claimant only worked one month of the quarter because she began work on December 1, 2020. The claimant did not produce any evidence that terminated employees were reimbursed for health care insurance premiums.

Regarding vacation pay of \$1,717.92, the claim reads in relevant part:

"First full year I accrued 5 days vacation (12/1/20 – 11/30/21). Second year I accrued 4 days based on one full day per month. (12/01/21 – 04/22/2022). (72 hours multiplied by \$23.86 hourly rate = \$1717.92).*** Does not include 3 full weeks in April 2022.****"

The employer's vacation policy reads in relevant part:

"Upon voluntary separation from employment, an employee is entitled to receive any accrued but unused vacation time payable at the employee's regular straight time base rate of pay."

The claimant was terminated from employment on April 25, 2022. The policy is silent on the payment of unused vacation time to terminated employees. The employer testified that as a matter of policy unused vacation time is not paid to terminated employees. The claimant did not produce any evidence that terminated employees were paid for unused accrued vacation time.

Regarding unpaid personal time pay of \$381.76, the claim reads in relevant part:

"Effective 01/01/2022 personal days reset to 2 days for every employee for immediate use. I did not use any of my personal time. (16 hours multiplied by \$23.86 hourly rate = \$381.76)."

The employer's personal leave days policy reads in relevant part:

"Each regular full-time employee is entitled to two personal days a year, credited on January 1 of each calendar year."

The claimant was terminated from employment on April 25, 2022. The policy is silent on the payment of unused personal time to all employees regardless of separation status. The employer testified that as a matter of policy personal time is intended for use by employees while they are employed, is not rolled over from year to year and unused personal time is not paid to separated employees regardless of status. The claimant did not produce any evidence that terminated employees were paid for unused personal time.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

In closing, the employer argued that the claimant was terminated and that the vacation time payout policy only applied to voluntary separation and was not intended to apply to terminated employees. The employer argued that as such the claimant is not entitled to a vacation time payout. The employer argued that personal time was not paid out to any employees upon separation as a matter of policy and that there is no such provision in the policy's language. The employer argued that health insurance reimbursement is provided to employees in good standing at the conclusion of the quarter, is not prorated as a matter of policy, is not provided to terminated employees and that there is no such provision in the policy's language.

In closing the claimant argued that because the vacation and personal time policies are silent on the issue of terminated employees and did not explicitly state that terminated employees were not eligible for payment of unused accrued vacation and personal time, it logically and necessarily follows that terminated employees should be paid for unused accrued vacation and personal time.

The claimant argued that because the health insurance reimbursement policy is silent on the issues of terminated employees and proration and because she received a reimbursement for the first quarter of her employment in which she worked one month, it was de facto a prorated reimbursement. Therefore, it logically and necessarily follows that terminated employees should be paid a prorated health insurance premium reimbursement.

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

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. In this case, the amount of what is owed to the claimant is disputed. The claimant's wage claim asserts that she is owed vacation and personal time pay, prorated health insurance reimbursement and liquidated damages.

Concerning unpaid vacation, the employer's policy is clear. Voluntarily separated employees are entitled to be paid for unused vacation time. Although the policy is silent on terminated employees, that silence does not mean that terminated employees are not entitled to a payout. However, the claimant was unable to demonstrate that the employer had a practice of paying unused vacation time to terminated employees. The employer credibly testified that they did not pay unused vacation time to terminated employees. These two facts make it more likely than not that the employer did not have a practice of paying unused vacation time to terminated employees. Without evidence of a practice and/or policy the claimant cannot meet her burden of proof.

Concerning the claim for personal time pay the employer's policy is clear. The policy applies to each regular full time employee. The policy is silent on reimbursement of unused personal time for all employees regardless of termination status. Moreover, the claimant was unable to demonstrate that the employer had a practice of paying unused personal time to employees regardless of separation status. The employer credibly testified that they did not pay unused personal time to terminated employees. These two facts make it more likely than not that the employer did not have a practice and/or policy of paying unused personal time to terminated employees.

Concerning health insurance premium reimbursement, the policy makes no provision for prorated reimbursement. The claimant requested reimbursement for the second quarter of 2022 before the quarter began. The employer testified that reimbursements were not prorated as a matter of policy. Moreover, the claimant was unable to demonstrate that the employer had a practice of reimbursing health care premiums to separated employees regardless of status.

It is found that the claimant the claimant did not meet her burden of proving that she was not paid in accordance with RSA 275:43 I. In light of this conclusion, it is found that the claimant is not entitled to compensation for unused vacation and personal time or prorated health insurance premium reimbursement.

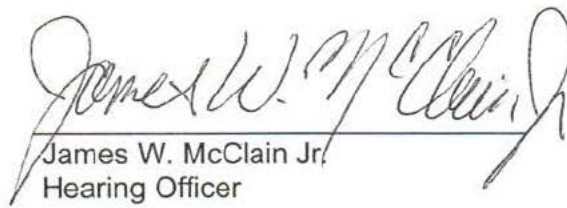
The issue of liquidated damages was not considered given that the claimant was unsuccessful on her underlying wage claim.

DECISION

The employer presented credible evidence that the employer paid the claimant all wages due.

The wage claim is found to be **invalid**.

September 14, 2022
Date of Decision



James W. McClain Jr.
Hearing Officer

JWM/js