

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.
McLane-Concord

Case No. 102656

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ Claimant
Will Giles, representing the Employer

NATURE OF DISPUTE: RSA 275:43 V — Weekly, Unpaid Vacation/Holiday Pay
(PTO)/~~Health & Welfare or Pension Fund Contributions~~
(removed at hearing)
RSA 275:48 I — Withholding of Wages, Illegal Deductions

DATE OF HEARING: September 12, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claim was filed on June 9, 2022. The claimant alleged that the employer deducted \$2,803.02 from his final paycheck without his authorization. The deduction was equal to his accumulated but unused paid time off (PTO). The employer filed an objection on June 21, 2022, with documents attached. The Department sent a copy to the claimant. Claimant requested a hearing on June 22, 2022; in that request, he also alleged that the employer would not let him access his retirement account until 45 days after his termination, under a rule he described as "bogus." The hearing notice was sent on June 24, 2022.

The hearing was originally scheduled for July 14, 2022. The claimant failed to appear for the hearing. It was found that the claimant did not receive proper notice and the hearing was rescheduled accordingly.

At hearing it was found that the claimant received his health and welfare and pension fund contributions, and that issue was removed.

FINDINGS OF FACT

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

The claimant testified he was hired on March 25, 2020 as a regional driver. He was paid \$33.89 per hour. He was injured at work on August 25, 2021 and worked on modified duty until November 30, 2021, when he took a leave of absence. On June 1, 2022, his employment was terminated. The claimant has an ongoing workers compensation claim against the employer.

The claimant elected to participate in various insurance benefit programs offered by the employer. On the original election form and whenever he changed his benefit selections, the claimant expressly authorized the company to withhold the amounts required for participation from his regular paychecks. The employer's exhibits included a Qualifying Event Change Form dated December 27, 2021, bearing the claimant's signature at the bottom below the acknowledgment.

William Giles is the employer's HR manager. He has been with the company for 10 years in management positions and has held his current position since late 2019. Mr. Giles testified that the claimant completed such forms on several occasions, and each time, he acknowledged, in pertinent part:

"By my signature below, I authorize McLane Company, Inc. to enroll me in the benefits I have requested and to take pre-tax and post-tax deductions from my taxable earnings to pay for the benefits I have elected."

The employer's Leave of Absence form was submitted as evidence. When an employee requests a leave of absence, he or she makes certain elections as to whether to continue receiving benefits while on leave and how the employee's weekly contributions will be handled (i.e., employer makes the payments and recoups them when claimant returns to work; or employee makes the payments while on leave; or employee stops payments and the benefits). On the form, the employee acknowledges in writing that certain additional conditions apply, including the following:

"If I terminate while on a LOA [leave of absence] the arrears balance may be taken from my final check".

Mr. Giles testified that the claimant completed the LOA form on two occasions, once for paternity leave on March 19, 2021 and once in connection with the leave of absence starting November 30, 2021. The claimant acknowledged in his filing that he had signed the forms, which authorized the employer to make the health benefit payments and recoup them from the claimant's final paycheck.

During the claimant's leave of absence from November 30, 2021 through his termination on June 1, 2022, the employer paid the claimant's contribution for the selected benefits. As of June 1, 2022, the employer had paid a total of \$5,509.84.

At termination, the claimant was due to receive a payout for his accrued but unused holiday pay (16 hours) and PTO/vacation time (66.68 hours). The payout value of the holiday plus PTO was \$2,802.02. The employer deducted this full amount in partial recoupment of the arrears, leaving a balance of \$2,707.81 as the amount still owed by the claimant, and zero balance due the claimant in his final check. The employer testified that they are not seeking the balance of the arrearage from the claimant.

At this point the hearing was concluded.

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).

With regard to the claim of illegal deductions, RSA 275:48 provides, in pertinent part,

I. No employer may withhold or divert any portion of an employee's wages unless:

(b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d)

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

This case involved the employer terminating the claimant while the claimant was on a leave of absence due to a workers compensation injury. The claimant signed a Leave of Absence Form to continue to receive health and welfare benefits and authorized the employer to make the employee contribution payments and recoup them when claimant returns to work. On the form, the employee acknowledges in writing that certain additional conditions apply, including the following:

"If I terminate while on a LOA [leave of absence] the arrears balance may be taken from my final check" (emphasis added).

The above condition constitutes a specific agreement allowing the employer to deduct any amount outstanding from final wages at the termination of employment under RSA 275:48.

The employer terminated the claimant after 6 months of leave after reviewing the claimant's status every 30 days, determining that the claimant was not going to be able to return to his job. Both parties agreed he had not voluntarily terminated his employment but was not going to return to the job. There was no testimony as to the applicable statutes and company policies.

The employer argued that the recoupment policy was clear, and that the claimant had voluntarily agreed to the policy. The claimant argued that he read the above condition as meaning it applied only if he *voluntarily terminated* his employment.

The claimant's argument is not logical. The employer had a policy of paying unused accrued PTO to terminated employees regardless of whether the termination was voluntary or involuntary. Regardless of whether the termination was voluntary or involuntary, the recoupment of the employer's health insurance contributions by the employer upon termination was authorized by the claimant in signing the leave of absence form. The claimant acknowledged signing the form, therefore authorizing the recoupment.

The employer presented credible evidence that the claimant had authorized the employer in writing to recoup the insurance contributions it had made on the claimant's behalf during his leave of absence from the final paycheck. The authorization complied with the requirements of RSA 275:48.

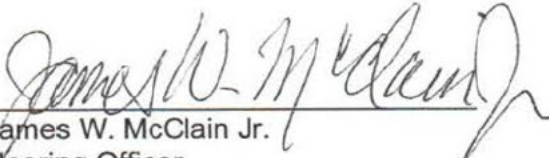
It is found that the claimant failed to meet his burden of proving that the deduction from his final wages was not authorized by RSA 275:48.

DECISION

For the reasons stated, it is found that the claimant failed to meet his burden of proof as to the claims for unpaid PTO.

The wage claim is ruled **invalid**.

September 29, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd