

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Yankee Fishermen's Cooperative

Case No. 102854

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ claimant
Lou Nardello, Yankee Fishermen's Cooperative
Attorney Suzanne King, Yankee Fishermen's Cooperative

NATURE OF DISPUTE: RSA 275:43 I - Weekly, Unpaid Wages (Removed at Hearing)
RSA 275:43 V - Weekly Unpaid Vacation Pay/Personal Days/Insurance Buyout
RSA 275:43-b - Payment of Salaried Employees, Unpaid Salary
RSA 275:43 I/279:21 VIII - Weekly, Unpaid Wages/Overtime (Removed at Hearing)

DATE OF HEARING: August 18, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on June 28, 2022, alleging that she was owed \$1,442.31 in unpaid wages, \$7,644.00 for estimated overtime pay and \$2,400.00 for a prorated annual health insurance allowance buyout. The total claim was \$11,486.31. The wage claim notice was issued June 29, 2022. The employer responded July 13, 2022. The claimant requested a hearing July 15, 2022 and the hearing notice was issued July 22, 2022.

The employer paid the claimant's wages by a check sent to the Department when the employer filed a response on July 13, 2022. At hearing the parties mutually agreed to withdraw the unpaid wages claim and the overtime claim. At hearing the claimant sought liquidated damages on the wages. That issue was not noticed for the hearing. The claimant expressed the intention to request a hearing on that issue in the future.

FINDINGS OF FACT

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

The claimant was employed as the general manager of the Yankee Fishermen's Cooperative (YFC) from January 1, 2019 to June 17, 2022, when she was terminated. The claimant testified she was not given a reason for her termination. The claimant's written and oral testimony were that she was a salaried employee. The claimant testified her salary started at \$60,000.00 per year and rose to \$75,000.00 at the time of her termination. The parties agreed she was also given a \$5,000.00 annual contribution from the employer to purchase her own health insurance.

The claimant's oral and written testimony were that she was owed \$1,442.31 for her last week's wages and \$2,400.00 for the unpaid remainder of the \$5,000.00 annual health insurance allowance.

Regarding the health insurance buyout of \$2,400.00 the claim reads in relevant part:

"I was allowed an extra 5000 (sic) yearly to be used for health expenses as part as (sic) my salary which I have only recieved (sic) approximately half."

The claimant testified that as general manager of the cooperative "I could have written myself a check for five thousand on January 1" for the health insurance allowance but did not as she deemed it detrimental to the cooperative's operating budget. Documentation from the board of YFC was submitted that indicated the health insurance allowance could be paid in a lump sum.

The employer submitted documentation showing that the claimant was paid the health insurance allowance monthly. The claimant received \$2,600.00 in health care allowance payments through June 28, 2022.

No other written documentation of the health insurance allowance policy was submitted. The claimant was uncontestably terminated from employment on June 17, 2022. There is no provision regarding the payment of unused health insurance allowance to terminated employees.

Regarding unpaid salary of \$1,444.31, the claim reads in relevant part:

"I was let go on mid afternoon Friday June 17th. Work week goes from Friday to Thursday."

The claimant was a salaried employee The claimant testified that her salary had been paid in full by July 13, 2022.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

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).

In closing, the employer argued that the claimant was uncontestedly terminated and that the health insurance allowance payout policy only applied to the claimant as long as she was employed by YFC. The employer argued that no evidence was introduced to substantiate or infer that YFC intended the health insurance allowance to be paid to terminated employees.

In closing, the claimant argued that because the option to take the health insurance allowance in a lump sum existed and she did not avail herself of that option, she should be allowed to exercise that option upon termination because it is a benefit that is owed to her.

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-b requires that a salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked. In this case, the amount of what is owed to the claimant is undisputed. Both parties agree that the claimant's wages/salary had been paid in full by July 13, 2022.

Concerning the unused health insurance allowance, although the policy is silent on terminated employees, that silence does not mean that terminated employees are entitled to a payout. Lab 803.03 required the employer to keep a detailed description of employment practices and policies for benefits. When a policy is silent, the Department will review the employment history/past practice to determine if a benefit is owed.

In this case, the policy was silent on what happens with the health insurance payout. However, the parties' practice for this benefit is not silent. The parties have established that this payout, which could have been paid in a lump sum, is not a lump sum benefit at the beginning of the year provided to the claimant.

The \$5,000.00 health insurance is paid to the employee in a monthly stipend. It is a stipend to allow the claimant to purchase health insurance in lieu of an employer provided policy where premiums would be taken out every month and an employer contribution would be made monthly.

Upon termination of employment arrangement there is no expectation or requirement that the claimant continue to keep the policy in effect. Given the facts in this matter, the claimant has received payment in full for her monthly health insurance payments. No additional health insurance premiums are owed.

It is found that the claimant has been paid her full wages/salary, albeit late. It is found that the claimant is not entitled to compensation for the unused health insurance allowance. In light of this conclusion, the claimant did not meet her burden of proving that she was not paid in accordance with RSA 275:43-b or RSA 275:43 V.

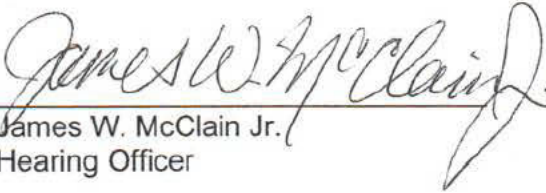
The issue of liquidated damages was not considered given that it was not noticed for hearing. Should the claimant wish to have the issue of liquidated damages heard she will need to file a subsequent wage claim for that issue.

DECISION

The employer presented credible evidence that the employer paid the claimant all wages, salary and health insurance allowance due.

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

September 14, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd