

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE



v.

Hillsboro House Nursing Home  
CASE #102969

**DECISION OF THE HEARING OFFICER**

**APPEARANCES:** Claimant, self-represented  
Andrew Irwin, representing the employer

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages)  
RSA 273:43, V — Weekly (unpaid employee vacation time)

**DATE OF HEARING:** August 24, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claim was filed on July 1, 2022. The claimant alleged that the employer owed one week's wages and a vacation payout following her separation from employment.

Notice of claim was mailed to the employer on July 8, 2022. The employer objected to the claim on July 12, 2022. The Department forwarded a copy of the objection to the claimant. The claimant responded to the employer's objection and requested a hearing on July 18, 2022. The Department forwarded to the employer a copy of the claimant's response. A notice of hearing was sent on July 22, 2022. The claimant appeared at the hearing in person and the employer appeared by telephone.

**FINDINGS OF FACT**

The following findings are based on the testimony of the claimant, employer's representatives Andrew Irwin and Heather Thyng, exhibits offered by the employer, and matters of record in the Department file. During the course of the hearing, both parties acknowledged under oath that their written submissions to the Department were true, and those statements that were copied to the other side are treated herein as part of the testimony in the case.

Claimant was a charge nurse at the employer's nursing home. She was paid \$29.00 per hour on a biweekly basis. Pay periods ran from Sunday to Saturday, with payday the following Tuesday. Claimant regularly received her paychecks in hand. The claimant's address as printed on the paystubs from August 31, 2021 through July 5, 2022 was 12 East Side Dr., Apt. 224, Concord NH 03301. The claimant testified that her current address was 14 Essex St., Apt. 1, Concord NH 03301, and had been since February 2020; it was also the address she gave on her wage claim.

The last biweekly pay period during which the claimant worked was the one that ended June 18, 2022. During that pay period, the claimant worked only the first week, a total of 64 hours. She did not work the second week. She did not come in on payday, June 21, 2022, to pick up her check and she did not contact the employer. The employer mailed the check to her address at 12 East Side Drive, Apt. 224 in Concord. The following day, the employer wrote an additional, non-payroll check to the claimant as a payout for unused vacation time. This check was also mailed to the claimant at East Side Drive. Neither check was returned to the employer undelivered.

The employer's exhibits included a paystub for the pay period ending June 18, 2022, showing gross earnings of \$2,360.00 (net after deductions, \$1,865.46). The exhibits also included documentation of a special vacation payout and a reconciliation paystub showing the vacation payout in the amount of \$318.03 (net after deductions, \$278.69)

The claimant agreed that the earnings and vacation payouts shown on these exhibits were correct and that they represented what she should have received as her final wages. However, she testified that she never received either check.

The employer had no evidence that either check had been cashed and made no allegation of such.

## **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).

The employer argued that it did not "owe" the claimant her final wages because it had issued the checks and those payments stood as liabilities on the company's books. However, the uncontested evidence showed that the claimant

never received those payments because they were mailed to an address where she no longer lives. Therefore, the final wages are still due. If the employer has an ongoing concern about the liabilities represented by those outstanding checks, such issues can be resolved by the employer through the mechanism of stop-payment orders.

### DECISION

Based on the testimony and exhibits presented at the hearing, it is found that the claimant proved that she is owed final hourly wages of \$2,360.00 (net after deductions, \$1,865.46). Her claim under RSA 275:43, I is **valid** to that extent.

It is further found that she proved she is owed a vacation payout of \$318.03 (net after deductions, \$278.69). Her claim under RSA 275:43, V is **valid** to that extent.

The employer is hereby ordered to send a check to the Department, payable to ██████████ within 30 days of the date of this Order, in the amount of \$2,144.15, which is the net due after deductions from the gross final amount due of \$2,678.03.

August 30, 2022  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/nd