

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

American Performance Polymers

Case No. 102987

DECISION OF THE HEARING OFFICER

APPEARANCES: █ Claimant, videoconference
Cindy-Lou Amey, Controller for Employer, personally

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

DATE OF HEARING: August 25, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on July 13, 2022, alleging that she was owed \$756.80 in unpaid vacation time. Notice of the claim was sent to the employer on July 13, 2022. The employer responded July 25, 2022. The claimant requested the hearing July 26, 2022. The hearing notice was issued July 28, 2022.

FINDINGS OF FACT

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

The claimant is a woman who resides in Stewartstown, New Hampshire. The employer is a manufacturing concern based in Colebrook, New Hampshire. The claimant testified that she was employed from July 11, 2021 to July 13, 2022 by the employer as a full-time puller and was paid \$16.00 per hour. The claimant's wage claim and testimony were that she never received an employee handbook or remembered signing anything about fringe benefits. The claimant testified she is owed 47.3 hours in vacation and personal time off for a total of \$756.80. The claimant offered no testimony as to how those hours were accrued.

The claimant testified that she was terminated on July 12, 2022 for misconduct. The claimant testified that she did not know what the paid time off (PTO) policy was. The claimant testified that she was never notified of the PTO policy but was told by a supervisor that she would receive PTO and that PTO was recorded in her pay remittances.

The claimant attempted to testify that she never received the employer's response to the wage claim. The hearing officer reminded the claimant that she was under oath and Department records indicated that the employer's response had been forwarded to the claimant on July 26, 2022, to which the claimant responded in requesting the hearing.

Under cross examination the claimant testified that she asked for a copy of the employee handbook but was told there was no employee handbook. Under cross examination the claimant testified that she had never seen a copy of the handbook in the employee break room.

The employer's July 25, 2022 written response reads in relevant part,

"The buy-back provision for accrued but unused PTO requires that an employee of American Performance Polymers be employed for at least one year, have voluntarily terminated employment with American Performance Polymers and have given at least 14 calendar days' notice of the day they intend to cease their employment. This provision is clearly stated in the employee handbook. Employees have access to physical and electronic copies of the handbook.

██████████ employment start date was 29 July 2021. ██████████ employment with American Performance Polymers was terminated on 13 June 2022 due to a violation of policy. Melanie does not meet the requirements in the PTO buy-back provision as provided within the employee handbook."

The employer's representative testified that the employer's policy is to pay unused PTO to employees in good standing who give two weeks' notice. The employer's representative testified that the claimant was not paid for her accrued PTO because she was terminated.

The employer's representative offered the employee handbook at hearing. The employer's representative testified that she was unable to bring the claimant's signed copy of the employee handbook because the employer is currently on furlough due to the business' dependence on federal contracts. The employer's representative testified that the employee handbook was made available on every table in the break room. She testified that she had no access to the claimant's human resource file prior to the hearing.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

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

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).

The employer's representative argued that the PTO policy is clear. The claimant argued that she should be paid for 47.3 hours for the remainder of her 2022 PTO.

In this matter the claimant credibly testified that she was employed by the employer. However, her testimony that she was owed PTO is not persuasive. The claimant provided no evidence that she was owed 47.3 hours of PTO. The claimant's testimony that she did not receive the employer's response to the wage claim was not credible.

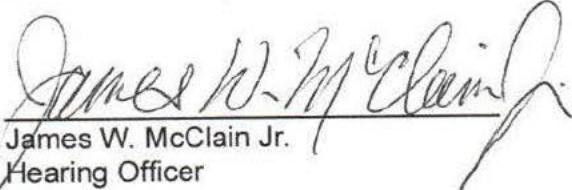
The employer's representative's testimony was found to be credible and is adopted. The employer's policy and practice are that the claimant was not eligible for payout of PTO because she had not worked for one year and was terminated. It is found that the claimant is not owed accrued PTO.

DECISION

Based on the testimony and evidence presented, this Department finds the claimant has not met her burden to prove by a preponderance of evidence that she is owed additional wages.

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

September 21, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd