

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]  
v.

Platinum Tan  
Case No. 103012

**DECISION OF THE HEARING OFFICER**

**APPEARANCES:** [REDACTED] Claimant  
Rochelle Roberts, Employer

**NATURE OF DISPUTE:** RSA 275:43 I — Weekly, Unpaid Commissions

**DATE OF HEARING:** August 23, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage claim on July 13, 2022, alleging that she was owed \$300.00 in estimated commissions for the month of June 2022. Notice of the claim was sent to the employer on July 15, 2022. The employer responded July 20, 2022. The claimant requested the hearing July 21, 2022. The hearing notice was issued August 11, 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 Nashua, New Hampshire. The employer is a tanning salon with locations in Nashua and Hudson, New Hampshire. The claimant testified that she was employed from January to July 2022 by the employer as a sales associate and was paid \$10.00 per hour plus a 5% commission on monthly sales. The claimant's wage claim documentation and testimony indicate that the claimant believes she is owed \$300.00 in estimated commissions for the month of June 2022.

The claimant was terminated for cause on July 7, 2022. The claimant testified that she closed the tanning salon that day because of a power outage. The employer testified there was no power outage that day. The employer also testified she was away on vacation on July 7, 2022. On cross examination the claimant reiterated that there was a power outage on July 7, 2022 which caused her to close the tanning salon.

The claimant and the employer testified that the claimant had been paid commissions prior to June 2022. The claimant read into the record text messages from

June 2022 in which the employer acknowledged the claimant's positive performance on numerous occasions and offered to advance the claimant \$100.00 of her June commissions. The claimant testified that the employer told her on June 30 that the employer had not calculated her commissions for June 2022. The employer did not contradict the claimant's evidence or testimony.

The employer's July 20, 2022 filed response and testimony were that commissions were paid to employees "if their job responsibilities were fulfilled". The employer cited the closing of the salon and made allegations of multiple examples of turning away clients and failure to renew client packages as the justification for failing to pay the claimant her June commissions. Specifically, the employer cited the closing of the salon "which cost me over \$600 in lost revenue". No evidence of these allegations was provided by the employer.

The employer testified that the conditions for earning commissions were enumerated in the employee handbook which the claimant had signed. The employer testified that the claimant would have had to sign the handbook in order to be paid. The claimant testified she had never been given an employee handbook and had not signed one.

The employer sent an e-mail to the Department on August 22, 2022 stating the employer would bring a signed hard copy of the handbook to the hearing. The employer did not do so. Instead the employer attempted to introduce an unsigned page she claimed was from the employee handbook. That evidence was not accepted.

The employer's testimony was that the commissions were only paid on products and not client packages. The employer introduced undated evidence that the claimant sold \$128.00 in products in some unspecified time period and was paid \$6.40 in commissions "as final severance". However, the documentation submitted by the employer indicates that commissions were paid on products, services and miscellaneous items.

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).

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 I provides, in pertinent part:

- I. Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis,



or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis...

In this matter the claimant credibly testified that she was owed commissions by the employer. This testimony was not contradicted by the employer. The employer acknowledged owing commissions to the claimant. Rather, the employer testified the claimant was not paid her commissions in June for something that occurred in July.

The employer's objection indicated that she would introduce the signed employee handbook that would explain her failure to pay the claimant's commissions. The employer did not do so. Alternatively, the employer argued that commissions were only paid on products and not client packages.

The employer introduced undated evidence that the claimant sold \$128.00 in products in some unspecified time period and was paid \$6.40 in commissions "as final severance". However, the documentation submitted by the employer contradicts the employer's testimony and indicates that commissions were paid on products, services such as teeth whitening and miscellaneous items.

The employer's testimony was not credible.

It is found more likely than not by a preponderance of the evidence that the claimant is owed \$300.00 in commissions. It is found that the claimant's testimony is persuasive. The employer's objection reads that the claimant was not paid her commissions for failing to renew client packages. Therefore it is found more likely than not that the claimant was earning commissions on sales of client packages, services such as teeth whitening and miscellaneous products. The numerous text messages read into the record in which the employer praises the claimant and offers to advance her June commissions make it more likely than not that the claimant was fulfilling her job responsibilities.

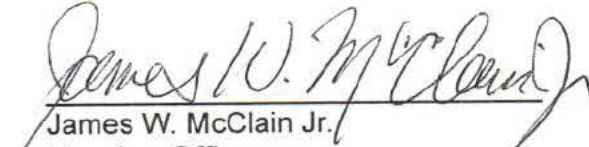
### DECISION

Based on the testimony and evidence presented, this Department finds the claimant has 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 **valid**.

The employer is directed to send a check in the name of ██████████ in the amount of \$300.00 less any applicable taxes to the New Hampshire Department of Labor within 30 days of the date of this order.

September 21, 2022  
Date of Decision  
JWM/nd

  
James W. McClain Jr.  
Hearing Officer