

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Dunlop Access Systems

Case No. 103037

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ Claimant, video conference
Sokol Necaj, Donald Macleod, for Employer, video conference

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

DATE OF HEARING: September 1, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on July 15, 2022, alleging he was owed \$6,015.38 for 23 days of accrued unused vacation time. Notice of the claim was sent to the employer on July 18, 2022. The employer responded August 1, 2022. The response documented that the claimant was paid for 13 days of accrued unused vacation time. The claimant requested the hearing August 2, 2022. The hearing notice issued August 8, 2022.

FINDINGS OF FACT

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

The claimant is a man who resides in Sandown, New Hampshire. The employer is a motorized scaffolding contractor based in Long Island City, New York. The claimant testified that he was employed for almost 8 years by the employer as salaried service technician and was paid \$58,000.00 per year. The claimant's wage claim documentation and testimony indicate that the claimant believes he is owed 23 days' vacation time for a total of \$6,015.38.

The claimant's last day of work was July 8, 2022. The employer's documentation indicates the claimant carried 10 days from the previous year, accrued 11 days and used 8 days in 2022 before separation from the employer. Therefore, the claimant had 13 accrued unused days for which he was paid on July 22, 2022.

The employer's documentation indicates the claimant was informed July 6, 2022 that he would be paid \$3,384.33 for accrued unused paid time off (PTO). The claimant was paid that amount on July 22, 2022. The claimant acknowledged he had been paid on that date.

The claimant provided a copy of the employer's PTO policy. The policy clearly reads in relevant part:

"All Full-time (sic) employees are eligible to *earn and accrue* personal time off ("**PTO**")" (emphasis added)

The claimant was eligible to accrue 1.75 days per month or 21 days per year under the policy. The claimant testified that he believed he was owed 10 days' PTO because he believed the 21 days' PTO was awarded to him every January 1. He testified he believed this because he and other employees were allowed to use vacation time before it was accrued.

The employer testified that managers had discretion to allow employees to use PTO in advance but that it was not a company policy to award maximum PTO on January 1 nor was its policy to pay separated employees for unaccrued PTO.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that he 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 testified that he believed he was owed PTO by the employer. However, this testimony is not persuasive. The claimant's assertion that he is owed unaccrued PTO upon separation is not supported by documentation. In fact, the employer's policy explicitly states that PTO is accrued, not awarded. Therefore, the claimant is not entitled to PTO he had not accrued.

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).

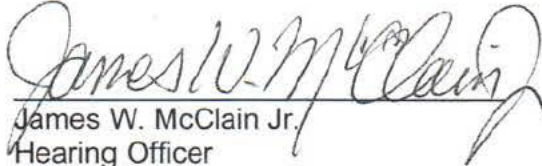
In this case the claimant was paid for the PTO he had accrued. It is found that the claimant is not owed 10 days' PTO.

DECISION

Based on the testimony and evidence presented, this Department finds the claimant has not met his burden to prove by a preponderance of evidence that he is owed additional wages for 10 days of PTO.

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

September 28, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd