

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

NEC Construction
CASE #103140

██████████
v.

NEC Construction
CASE #103141

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimants, self-represented
Employer, self-represented (failed to appear)

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid wages)
RSA 275:48 — Withholding of wages (unauthorized deductions) (withdrawn)

DATE OF HEARING: October 4, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimants filed individual wage complaints against the employer on July 26, 2022. Both claims were for unpaid wages. Notices of claims were mailed to employer on July 28. No objection was received. At the claimants' request, without objection from the employer, the cases were consolidated. The hearing notice was sent on September 14.

At the appointed hour for the hearing, the claimants appeared by telephone and the employer failed to appear. Fifteen minutes later, no one had appeared for the employer or contacted the Department. A call to the employer's phone number listed on the wage claim was answered with an automatic message stating that the number had been disconnected or was no longer in service.

The notice of claim and notice of hearing were mailed to the employer's address that was provided on the wage claim forms. The notices were not

returned undelivered. Claimants testified that the address of the employer was also the home address of its owners, Caitlin and Chris Vittum. Claimant Ms. ██████████ confirmed that the number called was the one she had previously used to contact the employer.

It was determined that the employer received proper notice of the hearing. The hearing proceeded in the employer's absence, pursuant to Department Administrative Rule Lab 203.04.

FINDINGS OF FACT

The following findings are based on the testimony of the claimants, their exhibits, and matters of record in the Department file. During the course of the hearing, both witnesses acknowledged under oath that their written submissions to the Department were true, and those statements are treated herein as part of the testimony in the case.

██████████ is 22 years old and currently lives in North Carolina with her fiancé, claimant ██████████. Ms. ██████████ has a high school diploma and has worked at a variety of jobs including self-employment as a babysitter for a few years, food service, and laundry technician. Mr. ██████████ is 21 years old and attended high school through the eleventh grade. He has done commercial and residential construction work and commercial cleaning.

In June 2022, the claimants were living temporarily in a tent at a campground in New Hampshire. They were looking for employment and an apartment. Mr. ██████████ responded to an internet ad for a job with the employer doing construction. He and Ms. ██████████ met with the employer's owners, Chris & Caitlin Vittum. Mr. ██████████ was hired to do residential and commercial carpentry for \$17.00 an hour. Ms. ██████████ was hired as a nanny for the Vittum children at \$13.00 an hour. The Vittums also agreed to let the couple stay in their house until they could find an apartment. The rent was \$100 a week.

Weekly pay periods ran from Saturday to Friday and paydays were on the following Friday. Both claimants were paid by check in hand.

Claimants worked their respective jobs for three weeks periods, from June 4 to June 24. For the first two pay periods, they received their regular paychecks.

On June 26, Ms. Vittum fired Ms. ██████████ over a disagreement as to how the claimant was caring for the children. Mr. ██████████ was also let go that day. The claimants were told to pack up and leave the house immediately and to send a forwarding address where they could receive their final paychecks. They took a bus to North Carolina a day or two later.

On June 29, 2022, Ms. ██████████ sent a text message to Ms. Vittum giving her their new address in North Carolina. Shortly afterwards, she learned from her bank that the employer's paycheck for the week ending June 10 had bounced. The employer did not respond to her text messages about this. Ms. ██████████ asked her grandmother to help. The grandmother contacted the employer. On July 18, the employer satisfied the bounced check, using an internet payment service. Copies of the receipt for payment and the NSF check were admitted into evidence.

The employer's co-owner Ms. Vittum also indicated to the claimant Ms. ██████████ grandmother that she had paid both claimants for their final week of employment. She texted to the grandmother copies of paystubs for each claimant, which the grandmother forwarded on to Ms. ██████████. Copies of both paystubs were entered as exhibits.

The paystub for Ms. ██████████ was for \$351.00 gross earnings, for Mr. ██████████ \$603.84 gross earnings. The paystubs showed both claimants' addresses as ██████████. That was the address where the employer's lived and where the claimants stayed for three weeks while working for the employer.

The claimants did not contest the amount of earnings shown on the paystubs, but they denied that they ever received the paychecks.

DISCUSSION AND CONCLUSIONS

The claimants had the burden of proving by a preponderance of the evidence that they were 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).

Claim for unpaid wages. The claimants' testimony regarding the unpaid wages for their final week of employment was straightforward and un rebutted. It was also supported by documentary evidence that corroborated the claimants' rate of pay, hours worked, and gross amounts due. The claimants' testimony that they never received payment for their last week at work is credited.

The claimants met their burden of proof as to their wage claims. The amounts shown on the two paystubs for the pay period ending June 24, 2022 are found to be the amounts owed to each respective claimant.

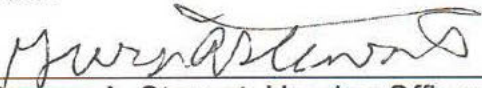
DECISION

Based on the testimony and evidence presented, as RSA 275:43, I requires that an employer pay all wages due an employee, and as this Department finds that the claimants proved by a preponderance of the evidence that they were not paid all wages due, it is hereby ruled that ██████████ wage claim is valid to the extent of \$351.00 and that ██████████ wage claim is valid to the extent of \$603.84.

The employer is hereby ordered to send a check to the Labor Department, payable to ██████████ in the amount of \$351.00, less applicable deductions, within 30 days of the date of this Order.

The employer is hereby ordered to send a check to the Labor Department, payable to ██████████ in the amount of \$603.84, less applicable deductions, within 30 days of the date of this Order.

October 5, 2022
Date of Decision


George A. Stewart, Hearing Officer

GAS/nd