

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.
Remcon-North Corp.

Case No. 103169

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ Claimant, telephonically
Margaret Ristaino, Employer Human Resources,
telephonically

NATURE OF DISPUTE: RSA 275:48 – Withholding of Wages, Illegal Deductions
from Wages

DATE OF HEARING: September 19, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on July 29, 2022, alleging that she was owed \$16.98 pre-tax weekly unauthorized deductions from August 2, 2018 to March 12, 2020. The wage claim notice issued July 29, 2022. The employer filed a response August 8, 2022. The claimant requested a hearing and the hearing notice issued August 23, 2022. The hearing was conducted telephonically.

FINDINGS OF FACT

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

The claimant filed a wage claim on July 29, 2022, alleging that she was owed \$16.98 pre-tax weekly unauthorized deductions from August 2, 2018 to March 12, 2020. The wage claim and testimony were that the claimant had been employed by the employer for between 22 and 23 years. The claimant did not give an exact time period. The claimant guessed that the deductions began August 2, 2018 but definitively testified that the deductions ended March 12, 2020. Most of the deductions were \$16.98 per week.

The claimant and her husband were both employed by the employer. The claimant's husband retired and the claimant kept working. No date was given for her husband's retirement. At some point the claimant noticed the pre tax deduction but never questioned it. Upon her husband's death on November 24, 2019, the claimant learned that the deduction was for an insurance policy with Colonial Life Insurance that

the husband had purchased for accidental/cancer death. The claimant's husband did not die accidentally or from cancer. The claimant did not benefit financially from the policy.

The claimant testified she repeatedly requested that the employer refund all deductions because she did not purchase the policy or authorize the deductions. Both parties agreed the claimant did not sign any document authorizing the deductions.

Regarding the claimant's request for the deductions to be refunded and the nature of the claimant's alleged assent to the deductions, the claimant offered the following in her submittal:

"The reply I got from Remcon-North Corp. was 'it is my understanding that this agreement was a verbal one, where payment was arranged for this policy to come out of your paycheck. With your longevity of time employed here we allowed this to be done verbally'".

The claimant testified that the above reply was sent to her by the employer's representative at the hearing. The claimant testified that she never authorized the deductions verbally or in writing. The employer's representative testified that she did send the above e-mail to the claimant.

Margaret Ristaino testified that she has been the human resources director for 2 years. She acknowledged that the deductions occurred. She testified that there is no document confirming that the claimant authorized the deductions. Her August 8, 2022 submittal to the Department confirms that the claimant "let Human Resources know that she didn't wish to have this supplemental life insurance plan". She testified she helped the claimant cancel the supplemental life insurance plan on or around March 12, 2020.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

The claimant had 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 275:48 I provides that employers may withhold a portion of an employee's wages for medical insurance benefits when the employee has given his or her written authorization and deductions are duly recorded.

RSA 275:48 II provides, in pertinent part,

"If an employer making a deduction of an employee's wages under paragraph I fails to make any payment relative to such deduction on the employee's behalf, and such employee loses any benefit or fails to meet an obligation caused by such failure, the employer shall be liable for such lost benefit or failed obligation... The employer shall also

be liable for any cost incurred by the employee caused by the employer's failure to make such payments."

In this case the employer deducted supplemental life insurance premiums from the claimant's wages to which the claimant had never assented.

It is found that the claimant is entitled to reimbursement for weekly supplemental life insurance premium deductions of \$16.98 from August 2, 2018 to March 12, 2020, a period of 85 weeks. The total amount of the reimbursement shall be \$1,443.30.

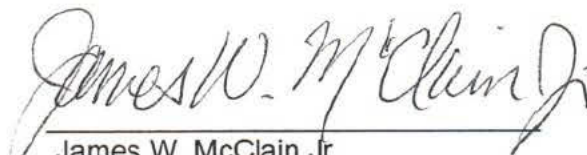
DECISION

After a review of the evidence, it is found that the employer withdrew premiums from the claimant wages without the claimant's authorization or consent. The claimant is entitled to reimbursement of the premiums in the amount of \$1,443.30.

It is hereby ruled that the Wage Claim is **valid**.

The employer is ordered to send a check to this Department payable to ██████████ ██████████ in the amount of \$1,443.30, less all applicable taxes within 30 days of the date of this order.

October 3, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd