

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Paradigm Shared Services, LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43-b unpaid salary  
RSA 275:43 V unpaid severance pay

**Date of Hearing:** February 14, 2019

**Case No.:** 58286

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$1,922.69 in unpaid salary and \$3,846.15 in unpaid severance because she was wrongfully terminated by the employer.

The employer denies the claimant is due any salary or severance because she was terminated for cause.

**FINDINGS OF FACT**

The claimant worked for the employer from April 2016 through December 2017, when she was laid off. She was rehired April 4, 2017, and was terminated for cause by the employer December 4, 2018.

Upon the claimant's rehire on April 4, 2017, her position was as a senior accountant. She was promoted sometime between July and September 2017 to Finance Manager or Director of Finance. The parties do not agree on the title; however, the employer agrees they mean the same thing.

The parties executed an agreement on March 28, 2017, which included terms and conditions of employment, base salary, work hours, and a clause regarding severance which reads, "In the event your employment is terminated by the Company without cause, you will be eligible for four (4) weeks of severance paid out over two pay cycles."

The claimant takes significant issue with the dates of meetings and people the employer state were in attendance. She first alleged the meetings did not happen and the people they assert were in attendance were not there. She went on to agree that some of the meetings may have happened, just differently than the way the employer explained them.

The employer and the HR Manager provided credible testimony that the claimant was verbally notified in the November 7 and November 21, 2018, meetings that her performance, including insubordination and failure to follow established financial and accounting practices, needed to improve or she could face termination. The HR manager also witnessed the insubordination of the claimant towards Mr. Labrasca.

The employer's 2017 taxes were not filed until August 2018, after receiving extensions from the IRS. The outside accounting firm, BerryDunn, noted several financial discrepancies in the data provided and the difficulty in obtaining any data from the claimant. This firm was called in to audit the financials of the company. As a result, the 2017 tax return will need to be amended and re-filed. BerryDunn provided the employer with the name of a consultant, "MJ", whom they ultimately began a relationship with in an effort to fix their financial issues. She is still associated with the employer.

### **DISCUSSION**

The claimant argues she is due the balance of her biweekly salary for the pay period in which she was terminated and that she is due severance payments according to her negotiations with the employer. She argues she was not terminated for cause, but wrongfully terminated because of her complaints to "MJ" regarding Mr. Labrasca's transactions she felt were inappropriate. She feels the employer is changing their story as to why she was terminated.

The employer maintains she was terminated for cause because of her insubordination and failure to follow established financial and accounting practices.

RSA 275:43-b II permits an employer to prorate salary to a daily basis when a salaried employee "is terminated for cause by the employer".

The current standard for a "for cause" termination is established by Lakeshore Estates Associates LLC v Michael F. Walsh (Belknap Superior Court No. 06-E-259, April 4, 2007). The Decision sets the standard as, "articulated at 82 Am. Jur. 2D *Wrongful Discharge* § 183 (2003), which provides that an employer may dismiss an employee "for cause" if the employee engages in misconduct. An employee's misconduct must comprise reasonable grounds for termination, and the employee must have received notice, express or fairly implied, that such misconduct would be grounds for termination. 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003); see also *Lowell v U.S. Sav Bank*, 132 N.H. 719, 726 (1990) (an employer must offer an employee a proper reason for a "for cause" dismissal). In reviewing a "for cause" dismissal, "the fact finder must focus not on whether the employee actually committed misconduct, but rather on whether the employer reasonably determined it had cause to terminate." 82 Am. Jur. 2D *Wrongful Discharge* § 179 (2003)".

The Hearing Officer finds that the employer reasonably determined that it had cause to terminate the claimant when she failed to correct her performance and continued to be insubordinate after being warned of impending termination in the November 7 and November 21, 2018, meetings.

The claimant seeks a severance payment.

The New Hampshire Supreme Court determined in ACAS Acquisitions (Precitech) Inc. v. Stephen C. Hobert 155 N.H. 381 that, “We agree with the trial court that because severance benefits were offered only in connection with the sale of Precitech and only then to a few employees on terms negotiated individually with those employees, granting severance benefits was not a matter of practice or policy at ACAS. Therefore, we conclude that the defendant’s severance benefits do not meet the definition of wages in RSA 275:42, III and RSA 275:43, III (now RSA 275:43 V).”

As such, the individually negotiated terms of a potential severance package do not meet the requirement of a policy or practice of the employer, are not considered wages and, therefore, cannot be dealt with in this Decision.

### **CONCLUSIONS**

Because the employer terminated the claimant “for cause”, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that she is owed any additional salary.

As severance is not considered wages in this instance, no conclusions can be made in this Decision.

### **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 RSA 275:43-b requires that a salaried employee received their salary, in full, for any pay period in which they perform any work, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due the claimed salary, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers severance pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer has a practice or policy of providing severance pay, it is hereby ruled that this portion of the Wage Claim is invalid.

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Hearing Officer

Date of Decision: February 28, 2019

Original: Claimant  
cc: Employer