

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



V

**Elmo Motion Control, Inc.**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/incentive/bonus

**Date of Hearing:** February 25, 2019

**Case No.:** 58332

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$11,160 in an unpaid incentive for the 2017 Hearts Incentive Program (HIP) and \$45,400 for an unpaid bonus of the 2017 Turnover Growth Bonus (TOGB).

The employer denies the claimant is due any 2017 TOGB bonus or 2017 HIP incentive as pursuant to the written policy, he was not employed at the time of the payments for those programs.

**FINDINGS OF FACT**

The claimant worked for the employer as a Regional Sales Manager and Sales Manager of the Eastern US from August 23, 2012, through August 10, 2018, when he was abruptly terminated by the employer.

The parties initially executed an agreement on or about August 23, 2012, regarding the terms and conditions of employment, including among other things, salary, benefits and a bonus program. The bonus program referenced in this agreement was terminated in 2014. The HIP incentive was introduced in 2014.

The parties executed a document with a typed date of April 1, 2017, however, both the claimant and Mr. McLaughlin signed the documents and hand dated them 1/6/2017 in two separate places.

This agreement has two separate parts, Part 1 is the TOGB bonus and Part 2 is the HIP incentive.

Part 1 reads, in relevant part, "10. The Elmo Employee will be entitled to get this bonus as long as she/he will be employed by Elmo at the time of the bonus distribution." "11. The TOGB is a personal benefit as a result of a team work. The management of the employee will be entitled to reduce or to cancel the bonus payment to an employee if employee's performance will not be satisfactory." and "12. The TOGB will be distributed not later than 60 days from the completion date of the audited balance sheets of Elmo of the "This Year Turn Over."

The audit for Elmo Global, the parent company for Elmo Motion Control, Inc., was completed in September 2018. The TOGB bonus was paid out to eligible employees on September 12, 2018.

Part 2 reads, in relevant part, “7. An Elmo Employee will be entitled to get this incentive payment as long as she/he will be employed by Elmo at the time of the bonus distribution.” and “8. The HIP is a personal benefit as a result of a team work. The management of the employee will be entitled to reduce or to cancel the bonus payment to an employee if employee’s performance will not be satisfactory.”

The HIP incentive was not paid out to employees as there were problems with the submissions and the applications for the incentives were all rejected for not having all required documentation for the MS3 and MS4 milestones. None of the applications for this incentive were resubmitted after being rejected by the employer.

### **DISCUSSION AND CONCLUSIONS**

The claimant argues he is due the TOGB bonus because the employer did not comply with the requirement to have the bonuses distributed within the sixty day requirement. Further he argues that the checks were on the CEO’s desk for signature in April 2018.

The employer argues, and the claimant agrees, that the sixty day requirement is for the audit of Elmo Global, which is based in Israel, not for Elmo Motion Control, Inc., in the US. Further, section 10 of the agreement signed January 6, 2017, reads, “10. The Elmo Employee will be entitled to get this bonus as long as she/he will be employed by Elmo at the time of the bonus distribution.”

The claimant agrees he was not employed when the payments were made, but it was the employer’s fault for delaying the payments and for terminating his employment prior to the payment being made.

The claimant argues he is due the HIP incentive because the employer did not comply with the requirement to have the bonuses distributed within the sixty day requirement. Further he argues that the checks were on the CEO’s desk for signature in April 2018.

The employer argues, and the claimant agrees, that there is no timeframe requirement for the employer to make any payments of the HIP incentive. Further, section 10 of the agreement signed January 6, 2017 reads, “7. An Elmo Employee will be entitled to get this incentive payment as long as she/he will be employed by Elmo at the time of the bonus distribution.”

The claimant agrees he was not employed when the payments were made, but it was the employer’s fault for delaying the payments and for terminating his employment prior to the payment being made.

RSA 275:49 I requires that an employer inform employees of the rate of pay, including any bonus, at the time of hire. Lab 803.03 (a) requires that an employer inform employees in writing of the rate of pay at the time of hire and prior to any changes. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer noticed the claimant, in writing, of the terms and conditions of both the TOGB and HIP programs, including the requirement that an employee needs to be employed at the time of the payments in order to receive any of the payments.

The claimant was not an employee of Elmo Motion Control, Inc., when they paid the TOGB bonus to eligible employees.

The employer did not make any payments to employees under the HIP program while the claimant was employed or after he separated from the company.

The claimant's argument that the employer delayed payments for HIP incentive and TOGB bonus, for whatever reason, is not persuasive. It appears the employer did adhere to their timeframe requirements for the TOGB bonus and the HIP incentive did not have a timeframe regarding payment.

Because the employer informed the claimant the TOGB bonus and HIP incentive required him to be an active employee to receive payments under these programs, and the claimant separated from employment, regardless of reason, prior to any payments being made, the claimant is not eligible for or due any payments under either of these programs.

As the claimant failed to prove he is eligible for payments under the TOGB bonus or HIP incentive, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed TOGB bonus or HIP incentive under the written policy of the employer.

### **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 claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages/incentive/bonus, it is hereby ruled that the Wage Claim is invalid.

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Hearing Officer

Date of Decision: March 6, 2019

Original: Claimant  
cc: Employer