

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

ODD FELLOWS DBA PRESIDENTIAL OAKS

Case No. 62089

DECISION OF THE HEARING OFFICER

Appearances: Ms. _____ on her own behalf, Pro Se
Ms. Anne Purington, on behalf of the employer

Nature of Dispute: RSA 275:43 I – Weekly, Unpaid Wages
RSA 275:43 I – Weekly, Unpaid Bonus

Date of Hearing: March 29, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertion that she is owed \$1,850.00 in unpaid wages in the form of unpaid bonus, she filed a Wage Claim with the New Hampshire Department of Labor (DOL) on January 28, 2021; a Notice of Wage Claim was forwarded to the employer on January 29, 2021. The employer objected to the Wage Claim in writing on February 3, 2021. The claimant requested a formal hearing on February 4, 2021. Notices of Hearing were sent to all parties on March 4, 2021, and a formal hearing was scheduled accordingly.

A formal hearing was held at the Department of Labor Headquarters in Concord, New Hampshire on March 29, 2021 at 1:00pm. All parties appeared telephonically. Telephonic testimony was provided by Ms. _____ on her own behalf, as well as Ms. Anne Purington, on behalf of the employer.

FINDINGS OF FACT

Ms. _____ began working for Odd Fellows on January 7, 2019 as a Senior Living Advisor. An offer letter confirmed that she was paid an annual salary of \$60,216.00 and was eligible for a "Start Up Bonus" and for "Move-In Bonuses based on the 'Move-In Bonus Program' in effect at the time of admission." (ER A)

On December 5, 2020, Ms. _____ employment was terminated.

Ms. _____ testified that after she was offered the job, there was no follow up regarding the "Move-In Bonus" program; there were no discussions and she was not provided with any additional paperwork. Ms. _____ testified that she first saw documents regarding the "Move-In Bonus" program with her termination letter in December 2020.

Around the time of termination, it came to the attention of the employer that Ms. _____ was not paid for her "Move-In Bonus." The employer issued Ms. _____ a check

on December 31, 2020 in the net amount of \$3,295.32 (gross \$3,777.24), which was the amount they believed she was owed in unpaid bonus plus 4% compounded interest. (ER D)

Both parties testified to an email listing the residents who Ms. [redacted] asserts she is owed a "Move-In Bonus" for; however, this email was not submitted into the record. There appears to be a letter dated January 3, 2021 from Ms. [redacted] to Ms. Purington articulating five (5) residents for which she believes she is owed a "Move-In Bonus" for; however, this letter does not explain how much is owed in unpaid bonus for each resident. (CL C)

[redacted] did not feel that she was paid in full, so she filed this Wage Claim on January 28, 2021.

After further review, the employer determined that Ms. [redacted] was owed an additional \$800.00 in unpaid bonus and issued her a check, again with 4% compounded interest, for net \$730.35 (gross \$826.66) on February 4, 2021.

Ms. [redacted] asserts that although she was remitted partial payment of the Wage Claim, she is still owed and due the total amount of the initial Wage Claim, \$1,850.00.

Ms. [redacted] requested a determination that she is owed and due \$1,850.00 in unpaid wages in the form of unpaid bonus.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she is owed and due \$1,850.00 in unpaid wages in the form of unpaid bonus. Proof by a preponderance of the evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

Ultimately, Ms. [redacted] simply cannot prevail in this matter with the documents submitted into evidence. Both parties referenced an email that contains the information of residents whom Ms. [redacted] believes she is owed a "Move-In Bonus" for and how much she is owed for each; however, upon review, a letter dated January 3, 2021 is the only document listing alleged resident move-ins that have associated outstanding bonus payments owed.

This letter does list five residents; however, it is not clear how much money Ms. [redacted] asserts she is owed for each resident, or how the total Wage Claim of \$1,850.00 is affected by the February 4, 2021 payment of \$730.35 net. In this matter, it is not possible to calculate if / how much Ms. [redacted] is owed in unpaid bonus without any information regarding how much money she contends she is owed specifically for each of the residents.

In order for Ms. [redacted] to prevail she would need to prove, by a preponderance of the evidence, that she is owed and due an unpaid bonus for moving specific residents into Odd Fellows for a specific monetary amount and address how the February 4, 2021 payment affected the amount of this Wage Claim. Without said information submitted into evidence, it is simply not possible for Ms. [redacted] to prevail in this matter.

Overall, it is the claimant's burden to prove, by a preponderance of the evidence, that she is owed and due \$1,850.00 in unpaid wages in the form of unpaid bonus. Given the reasoning explained above, it is determined that Ms. [redacted] has not met her burden of proof in this matter. This Wage Claim is invalid.

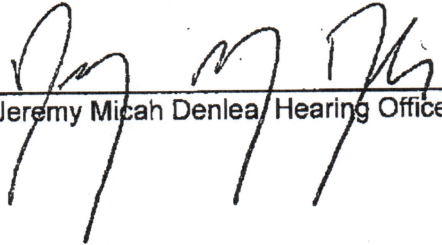
DECISION

Based on a thorough review of the evidence and testimony presented, and as RSA 275:43 (!) requires that an employer pay all wages owed and due to an employee, it is found that the claimant did not prove, by a preponderance of the evidence, that she is owed or due unpaid wages in the form of unpaid vacation pay; it is hereby ruled that **this Wage Claim is invalid.**

April 07, 2021
Date of Decision

Original: Claimant
cc: Employer

JD/sw



Jeremy Micah Denlea/ Hearing Officer