

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

JSK Fitness, L.L.C.
CASE #62186, 62187, 62193

DECISION OF THE HEARING OFFICER

APPEARANCES: [redacted] self-represented
[redacted] self-represented
[redacted] self-represented
Sean Kuit, representing the employer

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid wages)
RSA 275:43-b — Payment of Salaried Employees
(unpaid salary).

DATE OF HEARING: May 10, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

Claimants [redacted] and [redacted] filed on February 16, 2021. [redacted] filed on February 17, 2021. All allege that they were not paid their final wages for the pay period January 24, 2021–February 6, 2021. Notices of [redacted] s and [redacted] claims were sent to employer on February 17, 2021. Notice of [redacted] claim was sent on February 18, 2021. The employer filed an objection on March 23, 2021. The hearings were consolidated. A notice of hearing was sent on April 16, 2021.

All parties participated remotely by video conference under a standing order of the Department, necessitated by COVID-19.

FINDINGS OF FACT

The following findings are based on the testimony of the claimants, employer's representative, exhibits offered by the parties, and matters of record in the Department file. During the course of the hearing, all parties 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 42 years old and lives in Enfield with his wife. He has a master's degree in nutrition and human performance from Logan University, awarded in 2018. Prior to working for the employer, he and his wife owned and operated a fitness club, KDR Fitness in Lebanon for 10 years.

41, has a high school diploma and certifications in fitness and health-related specialties. She worked in a gym for nine years before running KDR Fitness with her husband.

26, lives in Lebanon. She has a bachelor of science degree in exercise science from Colby Sawyer College. Prior to working for the employer, she worked for KDR Fitness.

Sean Kuit, 54, lives in Lebanon. He has a high school diploma and served in the Vermont Air National Guard and worked in sales for 35 years. He is part-owner of the employer, JSK Fitness, L.L.C. in West Lebanon. He purchased the business in November 2018.

All three claimants came to work for the employer on or about November 1, 2020. was general manager; , personal trainer; Ms. fitness coach. All were salaried and paid biweekly, as follows: , \$2,769.23; i , \$2,769.23; i , \$1,600.00.

The claimants were allowed to work in the studio and at home. With regard to the pay period at issue, the employer contested whether Mr. and Ms. did any work at all during the first week, but agreed that each of them did some work during the second week. He conceded that Ms. worked both weeks with the exception of one day.

On Friday, February 5, 2021, Mr. Kuit received an email from Ms. that caused him some consternation. The email was not in evidence but apparently concerned a personnel issue. Mr. Kuit met that morning with Mr. and Ms. The issues raised in the email were not resolved, and Ms. ended up leaving work abruptly. She did not return to the workplace on Saturday, February 6, 2021 and on Sunday she informed the employer by email that she was resigning. Mr. resigned shortly afterwards. Ms. resigned on Monday, February 8.

In his written response to the claim and in his testimony, Mr. Kuit denied that Mr. and Ms. did any work during the first week at issue, January 24–January 30, 2021. He said that they did some work during the following week. But he also alleged they spent some of the time removing equipment from the gym without prior notice to him. He conceded that they owned the equipment they were removing, but argued that in removing their equipment, they were not working on his behalf as employees, but were preparing to “go it alone.” As he said in his written response, “The entire last

week of this pay period looks as if the three former KDR employees were planning to leave at the end of a pay period to back out on their own.”

The claimants denied the latter allegation and testified as to continuing efforts to get their former KDR clients “signed over” as the employer’s clients. In his resignation email sent February 7, 2021 to Mr. Kuit, Mr. _____ stated as follows, “I am sure you want to be compensated for KDR members using your facilities in January. As we had no formal agreement as to how much or terms, we will need to negotiate something that is mutually beneficial.”

DISCUSSION AND CONCLUSIONS

Each claimant had the burden of proving by a preponderance of the evidence that he or she was 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 salary. New Hampshire law generally requires that salaried employees “receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked,” RSA 275:43-b, I. However, there are certain exceptions to this rule, one of which permits employers to prorate salary on a daily basis when an employee “terminates of his own accord before the end of the pay period.” RSA 275:43-b, II.

In light of this law, the employer’s allegations that Mr. _____n and Ms. _____ did not work during the first half of the pay period is unavailing. The employer conceded that neither of them were at the time on unpaid leave, and also conceded that each of them did some work during the pay period. As salaried employees, they were entitled to receive their full salary for any pay period in which they performed any work. Both claimants testified as to work they did for the employer during both weeks of the pay period.

To the extent the employer raised an issue about whether Ms. _____ effectively resigned by walking off the job on Friday, February 5, one day before the end of the pay period, it is found that she did not actually resign until Sunday, February 7, 2021, after the pay period had ended, and therefore -- proration of salary is not warranted.

The same result holds for Ms. _____t, who the employer conceded worked all but one day during the pay period, and resigned the following Monday.

As for the employer's contention that one or more of the claimants acted with intent to sabotage his business, and allowed their once and future clients to use his facilities or services without compensation to his business, that raises a matter beyond the scope of a wage claim hearing pursuant to RSA 275:43 and :43-b. Any such claim would need to be brought before a court of competent jurisdiction.

DECISION

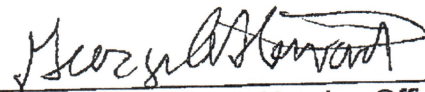
Having carefully considered the testimony and exhibits, it is found that the claimants proved that they were not paid their final wages, i.e., their regular salaries for the pay period January 24, 2021 to February 6, 2021.

The employer is hereby ordered to send a check to the Labor Department, payable to _____, in the amount of \$2,769.23, less applicable payroll 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 \$2,769.23, less applicable payroll 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 \$1,600.00, less applicable payroll deductions, within 30 days of the date of this Order.

June 04, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/sw