

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

v.

United States Postal Service  
CASE #62211

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, self-represented  
Employer did not appear

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages)  
RSA 275:44, IV — Employees Separated from Payroll  
before Pay Days (liquidated damages)

**DATE OF HEARING:** April 12, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage claim on February 22, 2021. He alleged that the employer failed to pay him his wages due for work done on January 28, 2021. He sought an award of liquidated damages. Notice of claim was sent to employer on February 23, 2021. No objection was filed. The claimant requested a hearing and a notice of hearing was sent on March 17, 2021. On April 9, 2021, the Department received a letter from the USPS Law Department, Northeast Division indicating that the employer would not participate in the hearing and asserting that the Department has no jurisdiction over the employer and thus cannot adjudicate the claim.

At the appointed hour, a telephone hearing was held under a standing order of the Department, necessitated by COVID-19. In light of the April 9, 2021 letter from the employer, the hearing proceeded in its absence, pursuant to Department administrative rule Lab 203.04.

**FINDINGS OF FACT**

The following findings are based on the claimant's testimony and exhibits and matters of record in the Department file. During the course of the hearing, the claimant acknowledged under oath that his written submissions to the

Department were true, and those statements are treated herein as part of the testimony in the case.

Claimant is \_\_\_\_\_ and lives in \_\_\_\_\_. He is a career rural carrier for the employer assigned to the post office in Stratham. He does not work for a private contractor of the postal service but directly for the postal service. He is a salaried employee and is paid by direct deposit every two weeks. He records his days worked on a biweekly time sheets. At the end of each workday, he records the hours worked that day and writes his name on the line for that particular workday. Claimant's supervisor is Craig Webb.

Claimant testified that he worked route on Thursday, January 28, 2021 but forgot to write his name on the time sheet at the end of the day. The next day, claimant received a text message from Mr. Webb advising him that he would not be paid for January 28 because he did not sign the time sheet. Claimant stated that Mr. Webb knew he worked on the 28th because he is the supervisor and is responsible to see that all seven delivery routes out of the Stratham office were delivered. On his earning statement dated February 5, 2021 for the time period January 16, 2021 to January 29, 2021, January 28, 2021 was recorded as a full day of leave without pay. (Claimant's exhibit.)

Claimant filed the instant claim on February 22, 2021. He was out of work on sick leave from January 29, 2021 until March 5, 2021. On April 2, 2021, he received his pay for working January 28, 2021. Having received his wages due, he was still seeking an award of liquidated damages based on the unwarranted delay in paying him.

### **DISCUSSION AND CONCLUSIONS**

The claimant had the burden of proving by a preponderance of the evidence that he 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.

In his closing summary, claimant stated that he was aware of the jurisdictional issue raised in the employer's April 9, 2021 letter. He said this was his second attempt to litigate the matter at the Department. His first complaint was rejected for lack of jurisdiction, with the suggestion that he seek relief from the United States Department of Labor. He said that he attempted to do so but was told by a person there that the federal agency would not hear his claim and he must return to this Department.

The employer is "an independent establishment of the executive branch of the Government of the United States" under 39 U.S.C. sec. 201. The first step in making a jurisdictional determination is to consider whether such an entity falls within the definition of "employer" in RSA 275:42:



The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person, except employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed.

The USPS does not appear to fall within this definition. That is likely the reason the claimant's first attempt to litigate his claim here was rejected. In light of the procedural history of the case, including the claimant's representations regarding his communications with the USDOL, the Department accepted the claim to give the claimant the opportunity to flesh out the facts of the case. If it turned out that the claimant worked for a private subcontractor of the postal service, the private contractor would in all likelihood fall within the definition of an employer under New Hampshire law. But that was not the case.

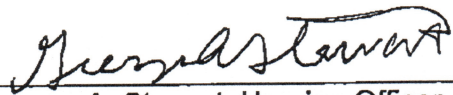
Having given the claimant a full hearing, it is apparent that the claimant's employer does not fall within the definition of employer under RSA 275:42 and therefore the Department lacks jurisdiction over the claim. The claim must therefore be dismissed.

Apart from the jurisdictional issue, it appears that the Department would be unable to grant any relief to the claimant under the facts of this case. Claimant has now received his wages due. His remaining claim for liquidated damages is precluded by the fact that he is still working for the employer. Claims under RSA 275:44 are predicated upon the employee's separation before paydays.

### DECISION

For reasons stated, it is found that the Department lacks jurisdiction over the employer and therefore the claim is **dismissed**.

April 16, 2021  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/cb