

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

v.

Getinge d/b/a Atrium Medical Corp.  
CASE #62238

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, self-represented  
Employer, represented by Susan Robidoux

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages)  
RSA 275:48, I — Withholding of Wages (illegal deductions from wages)

**DATE OF HEARING:** May 4, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed on March 1, 2021, alleging that he is owed wages based on improper payroll withholdings/diversions from his final paycheck. Notice of claim was sent to employer on March 3, 2021. No objection was received from the employer. The claimant requested a hearing and a notice of hearing was sent on March 31, 2021. Both parties participated remotely by telephone under a standing order of the Department, necessitated by the COVID-19 state of emergency.

**FINDINGS OF FACT**

The following findings are based on the testimony of the claimant, employer's representative, exhibits offered by both parties, and matters of record in the Department file. During the course of the hearing, both 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.

The claimant is      years old and lives in Merrimack. He has a bachelor of science degree in plastics engineering and a master's degree in operations and

project management from Southern New Hampshire University, awarded in 2018.

Claimant started working for the employer, a medical device manufacturer, in 2003. His title was senior project tooling engineer. He was responsible for the tool-builds to make and validate parts according to engineering designs. He worked at the Hudson facility and later, in Merrimack. His annual salary was \$120,656.00. He received his regular paychecks by direct deposit.

The company offered employees an educational assistance benefit, whereby it would reimburse the employees for qualifying educational expenses. The claimant applied for educational assistance on March 6, 2017. As part of the process, claimant signed a repayment obligation agreement that provided as follows:

EDUCATIONAL ASSISTANCE APPLICATION  
REPAYMENT OBLIGATION AGREEMENT

In exchange for receiving Educational Assistance benefits from Getinge, I acknowledge and agree to the following conditions:

I understand and agree that if I voluntarily terminate my employment, or if my employment is involuntarily terminated by the Company for cause, within 24 months from the date on which reimbursement was provided to me pursuant to the Educational Assistance policy, I promise to repay the Company the full amount reimbursed, during the 24 month period, within ninety (90) days from the date of my termination.

I hereby authorize Getinge to deduct from any salary or other monies due me as of my last day of Getinge employment all or part of any Educational Assistance owed to Getinge because of my voluntary termination of employment or involuntary termination for cause.

Repayment will not be required if Getinge eliminates my position (i.e. reduction in force or an organizational restructure, etc. whereby my position is affected).

I understand and accept the terms of the Educational Assistance Repayment Obligation:

(Employer's exhibit.)

In his written complaint, the claimant stated that he had received a total of \$5,250.00 in tuition reimbursement "from 3/16/17 on." However, at the hearing, upon review of the employer's exhibits, he agreed that he had received tuition reimbursements as follows:

Paid during 4th Qtr. 2016	\$ 5,250.00
Paid during 4th Qtr. 2017	\$ 5,093.60 (taxable)
Paid during 4th Qtr. 2017	\$ 5,250.00 (non-taxable)
Total	\$15,593.60

(Employer's exhibit.) Claimant also agreed that these tuition disbursements were received within 24 months of his termination from the company on March 1, 2018.

Claimant testified that he was terminated on March 1, 2018, a Thursday. He said he was terminated as the result of a reduction in force; his position was



eliminated. The next day he received by courier a letter from the employer, dated March 1, 2018 and signed by HR manager Susan Robidoux. In pertinent part, it stated:

Dear

Your employment concluded March 1, 2018. As a result, the following information explains the status of your benefits and final pay as of your last day of employment.

\*Pay Check(s): You would have received your last check within 72 hours. This check included your final eligible hours worked through your last day of employment. In addition, payment for any unused PTO based on our current records, and assuming no additional hours are used.

\*Per your signed tuition agreement, which states: "I understand and agree that if I voluntarily terminate my employment, or if my employment is involuntarily terminated by the Company for cause within 24 months from the date on which reimbursement was provided to me pursuant to the Educational Assistance policy, I promise to repay the Company the full amount reimbursed, during the 24 month period, within ninety (90) days from the date of my termination." Your final paycheck has been withheld to be put towards the payment of this outstanding amount. A copy of your signed agreement has been included with this letter.

(Employer's Exhibit.) Accompanying the letter was a final paycheck. The paystub showed a pay date of March 1, 2018, gross earnings of \$13,028.39 (regular pay plus vacation payout plus LTD disability), and a net, after payroll deductions, of \$9,100.21. (Claimant's exhibit.) Claimant deposited the net amount into his credit union account that same day.

On Monday, March 5, 2021, claimant received another letter from the employer, dated March 2, 2018, also signed by Ms. Robidoux. This letter stated, in pertinent part:

Dear :

As you know, your employment was terminated with Getinge on March 2, 2018.

We were notified by Shared Operations that you had taken part in Getinge's tuition assistance program shortly after your separation. Per policy, and based upon your signed tuition reimbursement agreement (enclosed), your last payroll check was withheld in order to cover part of the cost to the company. After this payment was processed, a remaining balance of \$4,677.52.00 [sic] is outstanding and due within 90 days of your termination date.

Please remit payment to:

Getinge

Attn: Human Resources Department

(Employer's exhibit.)

Claimant testified that the March 1, 2018 payroll check subsequently bounced. Just under three years later, he filed the instant claim. Compare, RSA 275:41 (Limitation of actions).

Susan Robidoux, 58, lives in Hancock. She is the human resources manager for the employer. The employer is an international medical device supplier. In 2011, it purchased Atrium Medical Group, a New Hampshire entity.

Ms. Robidoux testified that the company has some 459 employees in New Hampshire. It also has extensive operations in New Jersey.

Ms. Robidoux testified that on November 27, 2017 the claimant was placed under a 90-day performance improvement plan (PIP) for lack of professionalism, failure to meet deadlines, and poor project management. At the end of the PIP, his supervisor recommended termination. There was also an incident at about that time in which claimant he used inappropriate language (swearing) during a conversation with a supplier.

Claimant cross-examined Ms. Robidoux as to whether, after his termination, the company hired a replacement for this position, senior project tool engineer. She said that the New Hampshire division had not hired another person in that position, but stated that the reason for termination was not reduction in force; the claimant was fired for cause due to poor performance, failure to meet the PIP goals, and swearing at a supplier.

Regarding the issuance of a final paycheck and subsequent stop-payment order, Ms. Robidoux explained that payroll and benefits were handled by the company office in New Jersey. Through miscommunication, the payroll office did not withhold the final payment, even though the accompanying letter recited that the final paycheck had been withheld. The error was not noticed until after the check had been sent; a stop-payment was issued and a new letter was sent.

### **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. 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).

RSA 275:48 describes the circumstances under which an employer may withhold or divert any portion of an employee's wages. One of those circumstances involves recoupment of educational expenses that the employer has paid for. RSA 275:48 (d) (5) provides as follows:

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

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(5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:

(A) The time the payments will begin and end.



(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

In this case, it is found that employee made a written request for educational assistance, and that the requested assistance was provided. The uncontested evidence showed that the total amount of assistance provided was \$15,593.60. All of this assistance was provided within 24 months of the claimant's termination. In making his request for educational assistance, the claimant authorized the employer "to deduct from any salary or other monies due me as of my last day of Getinge employment all or part of any Educational Assistance owed to Getinge because of my voluntary termination of employment or involuntary termination for cause."

Acting pursuant to this agreement, the employer withheld the entire net amount from claimant's final paycheck, \$9,100.28, and applied that amount toward repayment of the educational assistance it had provided. After doing so, the company calculated, and informed the claimant, that he had a remaining balance of \$4,677.52 to be repaid within 90 days of the termination date.<sup>1</sup>

The claimant argued that the withholding of his final net pay was unlawful for a variety of reasons.

First, he asserted that "no written itemized accounting" of the money claimed to be owed was provided, as required by RSA 275:48 (d), which provides that

(d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month.

(Emphasis added.) In this case, the only deduction authorized by the agreement was from the claimant's final wages, and therefore a written, itemized accounting was required only as to that deduction.

In her letter dated May 2, 2018, Ms. Robidoux explained to the claimant that his last payroll check had been withheld to cover part of the money he owed to the company pursuant to terms of the tuition reimbursement agreement. She stated that the remaining balance was \$4,677.52. By adding this amount to net amount of the final paycheck, \$9,100.21, the claimant could have deduced that the total amount the employer was claiming was \$13,777.73. Beyond that, there was no evidence that the employer provided the claimant with an itemized accounting of the educational reimbursements it made, comparable to the summary it produced as an exhibit for the hearing. Even if it had provided this summary to the claimant with the March 2, 2018 letter, there would have

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<sup>1</sup> Ms. Robidoux acknowledged that \$15,593.60 less \$9,100.21 leaves a balance of \$6,493.39, not \$4,677.52. Neither party could explain this discrepancy.



remained a question as to why the total amount of reimbursement being claimed was substantially less than the total of the reimbursements actually made by the employer (see note 1).

Based on the foregoing, it is found that the claimant proved that the employer did not strictly comply with the written, itemized accounting requirement of RSA 275:48 (d).

The employer did not argue that it substantially complied with the written itemized accounting requirement, and such an argument would have been unavailing in the present context. Remedial statutes are liberally construed to achieve their intended goals. RSA Chapter 275 (Protective Legislation) is a remedial statute. The purpose of the provision at issue is to ensure that employees receive an explanation of deductions from their wages sufficient to allow them to verify that the deductions are correct and consistent with expenditures actually made on their behalf, and consistent with the terms of any previous authorizations and they have made.

Employers are generally prohibited from withholding or diverting an employee's wages due, except as specifically authorized by RSA 275:48. In this case, it is found that the employer did not fully comply with the requirements for recouping education expenses pursuant, RSA 275:48 (d) (5), and therefore its withholding of the claimant's net pay, \$9,100.21, from his final paycheck was improper.

In light of this finding, it is not necessary to address the claimant's additional arguments regarding the lawfulness of the withholding in this case.

### DECISION

Based on the testimony and evidence submitted, it is found that the employer's withholding of the claimant's net pay from his final paycheck was improper. His claim pursuant to RSA 275:48, I is ruled **valid**.

The employer is hereby ordered to send a check to the Labor Department, payable to \_\_\_\_\_, in the amount of \$9,100.21, within 30 days of the date of this Order. Payroll deductions for taxes, etc. have already been taken from the final wages, therefore no further deductions are to be made from the instant award.

June 2, 2021  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/cb