

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

SOUTHERN NH HEALTH

Case No. 62260

DECISION OF THE HEARING OFFICER

Appearances: Ms. _____ on her own behalf, Pro Se
Ms. Donna Bailey, on behalf of the employer

Nature of Dispute: RSA 275:43 I – Weekly, Unpaid Wages
RSA 275:48 I – Withholding of Wages, Illegal Deduction from Wages
RSA 275: 44 IV – Employees Separated from Payroll Before Pay Days,
Liquidated Damages

Date of Hearing: May 20, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

On the basis of the claimant's assertion that she is owed \$3,364.80 in unpaid wages, illegal deductions from wages and liquidated damages, she filed a Wage Claim with the New Hampshire Department of Labor (DOL) on March 4, 2021; a Notice of Wage Claim was forwarded to the employer on March 5, 2021. The employer did not object to the Wage Claim in writing. The claimant requested a formal hearing on March 23, 2021. Notices of Hearing were sent to all parties on April 27, 2021, and a formal hearing was scheduled accordingly.

A formal hearing was held at the Department of Labor Headquarters in Concord, New Hampshire on May 20, 2021 at 9:45am. All parties appeared via the video conferencing platform, Webex. Video testimony was provided by _____, claimant, on her own behalf, as well as Ms. Donna Bailey, on behalf of the employer.

It should be noted that the employer wished to call multiple witnesses at hearing; however, as no witnesses were disclosed in a timely manner, the employer's desired witnesses were not allowed to testify, but were allowed to observe the hearing, in accordance with Administrative Lab Rule 204.06.

FINDINGS OF FACT

Ms. _____ began working for Southern NH Health in June 2010 as an Orthopaedic Technician. Ms. _____ was compensated at a rate of \$23.34 per hour.

On March 26, 2020, due to the covid pandemic, Ms. _____ was furloughed from work. On September 9, 2020, her furlough was converted into a termination of employment.

While on furlough, Ms. _____ maintained her insurance benefits, and utilized them, but as she did not receive a regular paycheck, her premium deductions were postponed until she returned to work again.

After termination, Ms. _____ was given the opportunity to sign a "Confidential Separation Agreement and General Release," (Release) which she did choose to sign. The Release sets forth twelve (12) weeks of separation pay totaling \$10,082.88, paid in six (6) regular bi-weekly installments "less lawful payroll deductions." (Release 4a)

The Release also included clauses titled, "Waiver of Unknown Claims" and "Covenant Not to Sue." (Release 8, 9)

On September 11, 2020, Ms. _____ received a check for her unused accrued PTO in the amount of \$1.65. The statement of deductions shows \$1,103.76 deducted for health insurance, \$41.88 deducted for vision insurance, and smaller amounts for other insurances. (CL 11)

Ms. _____ additionally received a document titled, "What to Expect When Your Employment Ends." This document notes, "Additional premium deductions may need to occur in your last paycheck to cover the premiums for the entire month in addition to making up any previously unpaid premiums." (CL 8-9) This document also allowed for employees to choose to remain on COBRA; however, Ms. _____ did not elect to use COBRA.

Once Ms. _____ began receiving her Severance Pay she noticed that deductions continued to be taken for multiple insurances. (CL 13-14)

Ms. _____ requested a determination that she is owed and due \$3,364.80 in unpaid wages, illegal deductions from wages and liquidated damages.

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 \$3,364.80 in unpaid wages, illegal deductions from wages and liquidated damages. 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.

Ms. _____ argues that she has paid her insurance premiums in full and that any remaining balance should have been debited from her paychecks up front, which they were not. Instead, the balance was debited from her severance pay slowly over time. Ms. _____ attempted to contact the employer weekly about the insurance deductions, but never received a response. Ms. _____ requests a finding that she is owed and due \$3,364.80 in unpaid wages, illegal deductions from wages and liquidated damages.

The employer argues that they covered Ms. _____ insurance premiums while she was furloughed so that she maintained coverage. Once Ms. _____ was terminated, the employer debited the premiums owed for the months of furlough, first from her accrued unused PTO, then from her severance pay. The employer claims that they are still owed \$887.89 in unpaid insurance premiums from Ms. _____ and requests that this Wage Claim be dismissed.

Overall, the arguments of the employer are found to be persuasive.

It is uncontested that the employer covered Ms. [redacted] insurance premiums while she was furloughed and that Ms. [redacted] appreciated the use of said insurance.

The Release sets forth twelve (12) weeks of separation pay totaling \$10,082.88, paid in six (6) regular bi-weekly installments "less lawful payroll deductions." (Release 4a)

A deduction for premiums regarding an individual's insurance is a lawful deduction under New Hampshire Statute RSA 275:48 – Withholding of Wages.

Additionally, there was no evidence submitted into the record to demonstrate that the employer deducted an amount greater than that equal to Ms. [redacted] insurance premiums while furloughed.

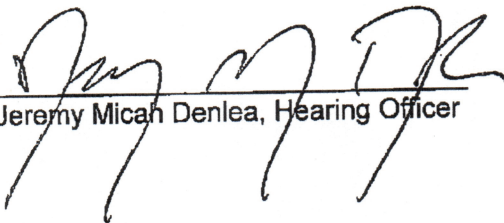
Ultimately, it is the claimant's burden to prove, by a preponderance of the evidence, that she is owed and due \$3,364.80 in unpaid wages, illegal deductions from wages and liquidated damages. Given the reasoning explained above, it is determined that Ms. [redacted] has not met her burden of proof in this matter. This Wage Claim is invalid.

DECISION

Based on a thorough review of the evidence and testimony presented, and as RSA 275:43 (l) 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, illegal deductions from wages or liquidated damages; it is hereby ruled that **this Wage Claim is invalid.**

June 4, 2021
Date of Decision

JD/sf


Jeremy Micah Denlea, Hearing Officer