

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

STONE PROS FABRICATION AND INSTALLATION, LLC

CASE #62280

DECISION OF THE HEARING OFFICER

**APPEARANCES  
(TELEPHONIC):**

The claimant, [REDACTED], appeared pro se.  
Brian Vachon appeared on behalf of the employer, Stone  
Pros Fabrication and Installation, LLC.

**WITNESS:**

Elizabeth Van Gelder, for the claimant.

**NATURE OF DISPUTE:**

RSA 275:43 I-Weekly, unpaid wages.  
RSA 275:44 IV Employee separated from payroll before pay  
days liquidated damages.  
Interest.

**DATE OF HEARING:**

July 12, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The New Hampshire Department of Labor file reflects that a wage claim in the amount of \$23,350.00 was filed by the claimant on March 8, 2021. A notice of wage claim was mailed to the employer on June 3, 2021. A hearing was scheduled in this matter and a hearing notice was mailed to the parties on June 16, 2021.

A formal hearing was held on July 12, 2021. Live testimony was provided by the claimant and Elizabeth Van Gelder, for the claimant. Brian Vachon testified for the employer.

The record was left open until July 14, 2021 at 4:30 p.m. for the parties to submit evidence. Nothing was received by either party and the record closed on July 14, 2021 at 4:30 p.m.

**FINDINGS OF FACT**

The claimant started working for the employer in January 2018, as a Fabricator/Installer. He last worked for the employer in July/August 2018. The claimant testified he worked forty hours a week and was paid by cash and check. The claimant testified that he kept a running log of what was paid and what remained unpaid by the

employer starting when he began working for the employer; he updated the log every week. The claimant stated that what he was paid is not close to what his running log shows he should have been paid. The claimant represented that he had unpaid wages for the time he worked with the employer in the amount of \$10,500.00.

Part of the claimant's wage claim is for things he lost, such as losing his vehicle and apartment. The claimant stated that he was unable to get food and accumulated back child support. He lived off his girlfriend's wages. The claimant testified that Mr. Vachon did not pay his bail, rather his girlfriend did.

Elizabeth Van Gelder is the claimant's girlfriend. She testified that the claimant was not paid enough and not pay the total amount he needed. She paid for daily expenses. Ms. Van Gelder stated that she did not pay the claimant's child support. She testified that the situation affected them financially. She indicated that the claimant loved his job and worked six days a week. Ms. Van Gelder does not recall Mr. Vachon handing the claimant any money when they went to bail him out. She testified that she took out \$250.00 to bail the claimant out.

Mr. Vachon has known the claimant for very long time and the claimant has worked for him at various times. Mr. Vachon indicated that in January 2018, the claimant became employed by him, but represented that he had no means of cashing a check and was in trouble in Maine. Mr. Vachon agreed to pay the claimant in cash until he got his situation in Maine straightened out. Mr. Vachon acknowledged that at times he would ask the claimant to wait for payment because he was waiting for a check to clear, but he then would pay the claimant.

Mr. Vachon testified that the claimant was not consistent in terms of his attendance and at times would not show up for a couple of days. He indicated that he paid the claimant's wages in full. The last communication he had with the claimant prior to hearing was in September 2018 when the claimant stopped showing up for work. Mr. Vachon had the claimant's last pay ready, but the claimant never picked it up. Mr. Vachon indicated that the claimant has never asked for money and never reached out to him before filing the wage claim.

### **DISCUSSION AND CONCLUSIONS**

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he is owed the wages claimed. Proof by a preponderance of the evidence is defined in Lab 202.05 as a demonstration by admissible evidence that a fact or legal conclusion is more probably than not.

Mr. Vachon argued that the claimant was paid his wages. Mr. Vachon pointed out that there are holes in the claimant's story and highlighted that there were times the claimant would not show up for work.

The claimant argued that even after months of not getting paid, he still showed up to work. The claimant highlighted that he has waited long enough for this money.

It is the claimant's burden in this matter. The claimant provided no evidence to support his testimony that he is owed \$10,500.00. The claimant represented that he had kept a running log and although this Hearing Officer kept the record open for this submission, as well as any other evidence that wanted to be submitted by the parties, the claimant failed to do so. There are no dates and times associated with the claimant's wage claim and the claimant waited a significant amount of time to pursue this matter. It is found that the claimant has not met his burden of proof in this matter. As the claimant is not found to be entitled to the wages, there is no finding on liquidated damages and interest.

### DECISION

Based on the evidence and testimony presented, it is determined that the claimant failed to prove by a preponderance of the evidence that he is due the claimed wages. It is hereby ruled that the Wage Claim is invalid.

August 3, 2021  
Date of Decision

*Daisy Mongeau*  
Daisy Mongeau, Hearing Officer

DAM/cb