

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

█
v.

North Haverhill Water & Light Village District
CASE #62540

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Dennis Fourier, representing the employer

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid wages)

DATE OF HEARING: June 17, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed on April 22, 2021, alleging that she was the bookkeeper for the employer and was paid by quarterly stipend; she resigned from her position on February 26, 2021 and submitted an invoice for her final wages from January 1 to February 16, 2021, totaling \$1,242.00; she has not been paid.

Notice of claim was sent to the employer on April 23, 2021. The employer filed an objection on April 29, 2021. Claimant requested a hearing May 10, 2021 and the notice of hearing was sent on May 28, 2021. Both parties participated remotely by telephone under a standing order of the Department, necessitated by COVID-19.

FINDINGS OF FACT

The following findings are based on the testimony of the claimant, employer's representative, and matters of record in the Department file. No exhibits were submitted. 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 42 years old and lives in █ She served as part-time bookkeeper from second quarter 2017 through the date of her resignation. She testified that she performed her duties to the best of her abilities

up until that time. She admitted that after she took a full-time job as administrator for the town of Piermont, she had trouble fulfilling all her responsibilities for the employer. She told Commissioner Richard Clifford in December 2020 that the town needed to hire a replacement for her. She never heard back. She continued to carry out her duties as best she could in January and February. Then about two days before the February meeting, Commissioner Clifford told her that she was going to be terminated at the next commissioner's meeting on February 16, 2021. She immediately submitted her resignation and did not attend the meeting.

Dennis Fournier, 70, also lives in North Haverhill. He was chairman of the village district's board of commissioners and superintendent of the water works. He did not contest that claimant's quarterly stipend was \$2,484.00 and that the pro-rated amount from January 1 to February 16, 2021 would be \$1,242.00, as claimed. He admitted that the district had not paid her for her work during the first quarter. He testified that the claimant had not been doing her job properly and that the district had incurred significant expenses after she left, as a result of her neglect of her duties. He also said that the district was in urgent need of records that it believed the claimant had, or had access to.

DISCUSSION AND CONCLUSIONS

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

Claimant's testimony regarding the unpaid wages was not contested as to the fact of non-payment and the prorated amount that would be due, had the claimant fulfilled her responsibilities properly. Claimant's testimony is therefore credited.

Employers are not allowed to withhold money from an employee's final wages except in limited circumstances that are set forth in RSA 275:48, I: None of the exceptions to the general rule are applicable here. In particular, poor performance is not a lawful basis for withholding wages after the fact. Accordingly, the claim is found to be valid.

To the extent the employer seeks a remedy for losses incurred due to the claimant's alleged negligence or malfeasance, or an order that the claimant cooperate with the new bookkeeper in locating or sorting out past records, such matters are beyond the authority of the Department. No opinion is expressed as to whether the employer may have a remedy in a court of competent jurisdiction.

DECISION

Based on the testimony and evidence presented, as RSA 275:43, I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,242.00.

The employer is hereby ordered to send a check to this Department, payable to ██████████ in the amount of \$1,242.00, less any applicable taxes, within 30 days of the date of this Order.

July 12, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/cb