

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

M&M CONSTRUCTION & HOME IMPROVEMENTS
CASE #62790

DECISION OF THE HEARING OFFICER

APPEARANCES (TELEPHONIC): The claimant, ██████████ appeared pro se.
The employer, M&M Construction & Home Improvements, failed to appear.

NATURE OF DISPUTE: RSA 275:43 I-Weekly, unpaid wages.

DATE OF HEARING: July 15, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The New Hampshire Department of Labor file reflects that a wage claim in the amount of \$800.00 was filed by the claimant on May 27, 2021. A notice of wage claim was mailed to the employer on May 28, 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 15, 2021. As this was a telephonic hearing, after the claimant was called, this Hearing Officer called ██████████ to reach the employer. The call was not answered and ended after an automated message indicated that the voicemail box was not set up. Mr. Yates indicated that that was the number he had for the employer, but also provided an additional number for the employer that was tried by this Hearing Officer. When 1-██████████ was called, an automated message indicate that to complete the call, dial 1 and the area code and number. There were no other numbers at which to attempt to contact the employer for hearing. The Department sent correspondence to the employer to notify them that the hearing would be held telephonically and that it was the responsibility of the employer to provide the Department with their contact information. The employer failed to do so.

In terms of service, the Hearing Notice was mailed to ██████████ Sanbornton, NH 03269, which the claimant represented was the address on his checks from the employer. This Hearing Officer notes that none of the mail sent to the employer has been returned as undeliverable. It was deemed that the employer had proper notice of the proceedings. After waiting fifteen (15) minutes with no communication from the employer that they were trying to call the Department and in accordance with Administrative Rule Lab 203.04, the Hearing went forward with the testimony of the claimant.

FINDINGS OF FACT

The claimant started working for the employer in February/March 2021, as a Carpenter/Framer. His rate of pay was \$20.00 an hour. The claimant stated that he was paid weekly, usually by check, although twice he received direct deposit. He indicated that Mike Lang is the owner and foreman.

The claimant testified that he worked eight hours on the following days: April 27th, April 28th, April 29th, April 30th, and May 3rd. The claimant stated that the employer did not need him to work on May 5th and then there was text communication on May 6th, where the employer and the claimant got into an argument and the claimant quit. The employer represented that he would mail the claimant's check, even though the claimant requested to pick it up. The claimant provided his address to the employer via text. The claimant provided text messages reflecting this correspondence.

After not receiving the check, on May 12th the claimant asked the employer if he had mailed the check via text and the employer responded that it was all set. Lastly, the claimant attempted to text the employer on May 14th in regards to the status of the check, however he represented that his number was blocked.

The claimant testified that as of the time of hearing, he has not been paid for work performed on April 27th, April 28th, April 29th, April 30th, and May 3rd.

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.

The claimant argued that he has not received payment for work, even though the employer said that they would send him a check.

The claimant's argument is found to be persuasive. The claimant credibly testified that he worked on April 27th, April 28th, April 29th, April 30th, and May 3rd and has not received payment. The text messages support the claimant's testimony. Further, the employer represented in the text messages that he was putting the claimant's check in the mail. The claimant credibly testified that he has not received it. The employer did not appear at the hearing with testimony and evidence to refute the evidence presented by the claimant. The claimant's testimony is accepted. The claimant stated that his rate of pay was \$20.00 an hour. The claimant was honest and forthright in his testimony and it is determined that he is entitled to \$800.00 (40 hours x \$20.00) in wages.

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 he is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$800.00.

The employer is hereby ordered to send a check to this Department, payable to ██████████ ██████████ in the amount of \$800.00, less any applicable taxes, within 30 days of the date of this Order.

July 30, 2021
Date of Decision

Daisy Mongeau
Daisy Mongeau, Hearing Officer

DAM/cb