

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

  
v.  
Concord Hospital  
CASE #63070

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, self-represented, did not appear  
Stephanie Rochon, representing the employer

**NATURE OF DISPUTE:** RSA 275:44, IV — Employees Separated from Payroll  
before Pay Days (liquidated damages)

**DATE OF HEARING:** August 24, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed on July 13, 2021, alleging that she gave notice that her last day would be June 3, 2021. The next regular payday after June 3, 2021 was June 17, 2021. She had unused accrued vacation time worth \$4,427.89. That amount was not paid out in her last regular paycheck on June 17, 2021. She did not receive the payment for unused earned vacation time until July 2, 2021. She claimed that she was entitled to liquidated damages equal to the full amount that was due to her on June 17, 2021, due to the delay in payment.

Notice of claim was sent to the employer on July 14, 2021. The employer filed an objection on July 16, 2021 alleging that the claimant did not separate from employment but rather changed her status from regular hourly to per diem. As a per diem employee, she was no longer eligible to accrue earned vacation time, therefore the employer paid out her unused accrued vacation time. Due to a system issue, there was a delay in the payout. She was not paid until July 2, 2021. Notice of hearing was sent on July 28, 2021.

The claimant did not appear for the hearing. A review of the file indicated that the notice of hearing was mailed to the claimant at the address she provided in the original claim and was not returned to the Department as undeliverable. The file also contained email correspondence with the Department from the claimant as recently as July 19, 2021. It was therefore determined that the

claimant received adequate notice of the hearing. After waiting 15 minutes for a delayed arrival or other communication from the claimant, the hearing proceeded in her absence, consistent with administrative rule Lab 203.04.

The employer's representative was advised that it was the claimant's burden to prove the allegations in her claim and that she was entitled to liquidated damages. She was further advised that employer was not required to present rebuttal evidence unless and until the claimant presented testimony or evidence in support of her claim. The employer's representative elected to testify.

### **FINDINGS OF FACT**

The following findings are based on the testimony of the employer's representative and matters of record in the Department file.

Stephanie Rochon, 39, of Concord, is a human relations, compensation, and retirement specialist for the employer hospital. She testified that the following facts were not in dispute:

The claimant was employed as a nurse. Up through June 3, 2021, she was a regular hourly employee. On June 4, 2021, she was offered a position as a per diem nurse. As of June 3, 2021, she had an unused earned vacation balance of 142.33 hours, which was worth \$4,427.89 based on her rate of pay.

Pursuant to the employer's policy and practice, per diem employees were not eligible to earn vacation time. Employees changing from regular hourly to per diem were to be paid out their unused vacation time upon their transfer to per diem status. On June 10, 2021, the claimant accepted the offer of employment as a per diem employee.

On June 17, 2021, the employer paid the claimant her regular wages due through June 3, 2021. Due to a system issue, the claimant was not paid her unused vacation pay until the following payday, July 2, 2021.

The employer's representative denied that the claimant resigned from her employment; rather, the claimant requested a change of status from regular hourly to per diem. She never ended her employment with the hospital.

### **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).

RSA 275:44 provides, in pertinent part,

II. Whenever an employee quits or resigns, the employer shall pay the employee's wages no later than the next regular payday, as provided under RSA 275:43, either through the regular pay channels or by mail if requested by the employee, except that if the employee gives at least one pay period's notice of intention to quit the employer shall pay all wages earned by the employee within 72 hours.

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IV. If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages....

Because the claimant failed to appear at the hearing and offer proof to support her allegations, it is not necessary to consider whether those allegations, if credited, would have been sufficient to support an award of liquidated damages under RSA 275:44, IV. The employer's un rebutted testimony that the claimant did not resign but simply changed her status from regular hourly to per diem, is credited. In light of this testimony, the claimant failed to meet her burden of proving that she "resigned" within the intendment of paragraph II above, or that in failing to pay-out her unused vacation pay on her next regular payday, the employer acted "willfully and without good cause" within the intendment of paragraph IV above.

### DECISION

Claimant failed to appear at the hearing and offered no evidence to support her allegations. The employer presented credible evidence that the claimant did not resign and that the employer did not willfully and without good cause fail to pay her wages due within the time frame required by law.

The wage claim is found to be **invalid**.

September 3, 2021  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/cb