

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Key Motors of Newport, L.L.C.  
CASE #63174

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, self-represented (failed to appear)  
Mubera Durakovic, representing the employer

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages)  
RSA 275:43-b — Payment of Salaried Employees  
(unpaid salary)  
RSA 275:43, I — Weekly (unpaid commissions)

**DATE OF HEARING:** September 22, 2021

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed on July 26, 2021, alleging that he was employed as a parts manager at a weekly salary of \$1,000.00. He was terminated on July 20, 2021 and was not paid his full week's salary but only \$400.00. He further alleged that he was due a commission of \$802.98 for July but was not paid it.

Notice of claim was sent to the employer on July 27, 2021. The employer filed an objection on August 2, 2021. Attached to employer's objection was a document titled, Key Auto Group Parts Manager Compensation, purporting to bear the signatures of [REDACTED] and General Manager Jeff Scarinza.

The hearing notice was sent on August 23, 2021. The notice sent to the claimant was not returned to the Department undelivered. It was determined that the claimant had notice of the hearing. He did not appear for the hearing at the appointed hour, and, after fifteen minutes, the hearing proceeded in claimant's absence, pursuant to Department Administrative Rule Lab 203.04.

## FINDINGS OF FACT

The following findings are based on the testimony of Mubera Durakovic and matters of record in the Department file.

Ms. Durakovic is the director of human relations for employer's parent company, Key Auto Group. In her capacity as HR director, she was familiar with the circumstances of claimant's employment at the company's Newport subsidiary.

Claimant was hired in April 2021 in the position of parts manager. His salary was \$1,000.00 a week. In June and July 2021, claimant received verbal warnings that he was not meeting expectations with respect to his job as parts manager; he was not keeping parts in stock. On Monday, July 19, 2021, regional service manager Peter Joubert sent the claimant an email criticizing him for not having brakes on hand. The email did not mention corrective measures that would be taken or warn him he would be fired if he did not improve. The next day, July 20, 2021, Mr. Joubert met with the claimant in Newport and told him he was terminated, effective that day. Ms. Durakovic testified that the message Mr. Joubert relayed to her was that the claimant was told he was an at-will employee and was not a good fit for the company due to his inability to keep parts stocked.

Pay periods run from Sunday to Saturday. Claimant's final paycheck was pro-rated at \$200.00 per day for the two days he worked during the final pay period. He was not paid a commission on parts sales for July because he was not an employee at month's end, which is a requirement for eligibility under the employer's written compensation plan.

## 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).

Claim for unpaid salary. New Hampshire law generally requires that salaried employees "receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked," RSA 275:43-b, I. However, there are certain exceptions to this rule, one of which permits employers to prorate salary on a daily basis when an employee "is terminated for cause by the employer." RSA 275:43-b, II.

The Department standard for deciding whether a termination is "for cause" was established in Lakeshore Estates Associates LLC v. Michael F. Walsh (Belknap Super., 06-E-259, April 4, 2007). The Court held that, to constitute termination "for cause" as intended by RSA 275:43-b, II, the employer had to have had reasonable grounds for determining that the employee engaged in misconduct meriting termination. In this case, it is found based on the evidence presented that the claimant was terminated for performance issues—his failure to keep parts stocked. This does not rise to the level of misconduct warranting a termination for cause.

Accordingly, the claimant was entitled to his full weekly salary of \$1,000.00 for the final pay period in which he worked. He received only \$400.00.

Claim for unpaid commissions. RSA 275:43, I requires that an employer pay all wages when due. Wages include commissions. "When due" is a reference to contingencies specified in the commission agreement that the employee needs to meet in order to be eligible for the commission. It is the claimant's burden to prove that he met the contingencies entitling him to receive the claimed commission.


In this case, the employer submitted competent evidence showing that the claimant had to be an employee at the month's end in order to receive commissions for that month. He was not an employee after July 20, 2021 and therefore was not eligible to receive a commission for the month of July.

### DECISION

With respect to the claim for unpaid wages pursuant to RSA 275:43, I and RSA 275:43-b, it is found that the claimant was entitled to receive his full salary of \$1,000.00 for the pay period ending July 24, 2021 but received only \$400.00. His claim is therefore **valid** to the extent of \$600.00. With respect to the claim for unpaid commissions pursuant to RSA 275:43, I, his claim is found to be invalid.

The employer is hereby ordered to send a check to the Department, payable to ██████████ in the amount of \$600.00, less any applicable deductions, within 30 days of the date of this Order,

October 12, 2021  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/sf