

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

White Construction Company
CASE #63226

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented, did not appear
Lindsay and Patricia White, representing the
employer

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

DATE OF HEARING: December 15, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on July 30, 2021, alleging that he was owed \$3,537.00 in unpaid wages.

Notice of the claim was sent to the employer on August 3, 2021. The employer filed an objection on August 30, 2021 alleging that the claimant had been paid. The claimant requested a hearing September 10, 2021.

The claimant did not appear for the hearing. A review of the file indicated that the notice of hearing were mailed to the claimant at the address he provided in the original claim and was not returned to the Department as undeliverable. 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 his 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 his claim that he 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 his claim. The employer's representative elected to testify that the documents submitted are true and accurate.

FINDINGS OF FACT

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

Patricia White, 61, is the office manager for the employer. She testified that the employer's submittal was a true and accurate record of the facts.

The claimant was employed as an excavator operator on June 21, 2021 until July 8, 2021. Through July 8, 2021, he was a regular hourly employee at the rate of \$25.00 per hour. The first workweek ended 6/26/21, the second 7/2/21 and the third 7/9/21. The employer produced financial transaction records indicating payment to the claimant for those weeks on 7/2/21, 7/9/21 and 7/16/21 (attachment 6). The total wages paid are \$2,868.76.

The employer's representative verified that the claimant never reported for work after July 8, 2021.

DISCUSSION AND CONCLUSIONS

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

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 his 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 employer paid wages through July 16, 2021 to the claimant, who failed to report for work after July 8, 2021, is persuasive. In light of this testimony, the claimant failed to meet his burden of proving that he was not paid in accordance with RSA 275:44 II.

DECISION

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

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

January 3, 2022
Date of Decision


James McClain, Hearing Officer

JM/cb