

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

GENESIS HEALTHCARE OCEANSIDE CENTER

Case No. # 63274

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] self-represented, claimant
Madeline Quimby, Human Resource Manager, on behalf of
Genesis Healthcare Oceanside Center

Nature of Dispute: RSA 275:43 I-Weekly, Unpaid Wages
RSA 275:43 V - Weekly, Unpaid Vacation Pay/PTO

Claimant: [REDACTED]

Employer: Genesis Healthcare Oceanside Center

Witness: Shaun Qualter, Executive Director (Employer)

Date of Hearing: October 5, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a Wage Claim with the New Hampshire Department of Labor on August 6, 2021 asserting that he is owed 255.28 hours of PTO totaling \$8603.70. Notice of Wage Claim was forwarded to the employer on August 10, 2021. The employer's objection to the Wage Claim was received on August 19, 2021. The claimant requested a hearing for review. A hearing was scheduled accordingly and Notices of Hearing were forwarded to both parties on December August 30, 2021.

A formal hearing was held by the Department of Labor in Concord, New Hampshire at 8:30 AM on October 5, 2021. Both parties appeared for the hearing. The claimant appeared in person and represented his own interests. Employer representative, Madeline Quimby, and employer's witness Shaun Qualter appeared telephonically.

FINDINGS OF FACT

The claimant submitted a Wage Claim to the Department of Labor asserting that he was owed unpaid wages for 255.28 hours of PTO leave. The claimant worked for this employer since October 2001, full-time, and is the Director of Maintenance. The claimant burns 40+ dollars per hour and work between 40 and 50 hours per week. Throughout his employment he has carried health insurance and earned PTO hours.

At the time of the open enrollment in November 2020, the claimant opted to drop his health insurance because he understood going on Medicare would be less expensive. The claimant testified that he only wanted to cancel his health insurance but not his PTO. He explained that upon separation from employment employees are paid their unused PTO balance. On January 5, 2021, he asked to put in for PTO time and was told that he didn't have any time on the books.

The claimant testified that neither Maddie from HR or Sean the Executive Director knew he would lose his PTO. He is seeking his PTO time back as he didn't understand he would lose his PTO when he canceled his health insurance. He testified that he thinks you can go online to see you benefit status, but he does not do so. He is of the opinion that there was an honest mistake made by both parties.

Duly sworn, Madeline Quimby testified that she is a human resource manager for the employer. On November 23, 2020, during the open enrollment period, the claimant came to her and told her he wanted to get rid of his health insurance. The company provides benefit information both online on the Genesis Central Page which all employees have access to and is also available break. Flyers were also distributed to employees. When the claimant opted out of the insurance, he also elected to receive modified compensation. On page 21 of the benefits brochure, modified compensation is explained as pay in lieu of benefits. The brochure explains that there are benefits given up and benefits retained when selecting this option. Benefits given up include vacation, sick time, and personal time both future and all previously accrued and earned, medical insurance, company pay life insurance, paid holidays, and pretax flexible spending accounts. In exchange, the claimant received a 25% increase in his base pay.

Duly sworn, Shaun Qualter testified that he is the Executive Director. The claimant came to him and told him that all of his PTO time had been taken away. Mr. Qualter explained to the claimant that he thinks that's what happens when you select modified compensation and indicated he would check with human resources. The claimant told him that he had no idea that he would lose the PTO time he had previously accrued. Had he understood that to be the case, he would not have selected modified compensation. The claimant indicated he was willing to pay back the modified compensation in order to have his PTO reinstated. He explained that his understanding was that he simply would not accrue PTO into the future.

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 unpaid wages. Proof by a preponderance of evidence as defined in Administrative Rule Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The State of New Hampshire does not require employers to offer benefits to their employees and, if they do, does not require employers to implement specific terms or guidelines. However, if the employer offers benefits to employees, a thorough description of how employees earn them, how employees are able to use them, what happens to any accrual at separation, as well as any other stipulations the employer decides to include, are required pursuant to RSA 275:49. RSA 275:49 requires employers, in part, to inform employees in writing, as to their employment practices and policies with regard to vacation pay and other fringe benefits.

The claimant argued that it was unclear to him when he selected modified compensation that he would lose his bank to PTO time. He is of the opinion that this was a surprise to everybody and it was an honest mistake. The employer opted not to provide a closing argument.

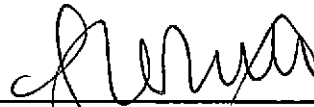
It is clear that the claimant has been a long time employee it appeared at the hearing that he had a wonderful working relationship with both human resources and the Executive Director. The evidence supports that during the open enrollment period in November 2020, the claimant elected to drop his health insurance coverage and also elected to receive modified compensation. While the claimant's testimony that he did not understand that selecting this option would result in a forfeiture of PTO benefits he had previously accrued is quite credible, the company does have a written policy with respect to this benefit.

The employer testified that the policy is made available on the Genesis Central Page which all employees have access to, flyers are handed out, and the information is posted in the employee break room. The evidentiary packet includes benefit information for the employer. At page 21 of the benefit packet there is information relative to modified compensation. The policy clearly articulates that when selecting this benefit employees are giving up vacation, Genesis sick time, and personal time both into the future and all previously accrued and earned. It is unfortunate that the claimant did not have a clear understanding when selecting the modified compensation that he would lose the 255.28 hours of PTO time he had banked; however, the policy clearly articulates that in selecting the modified compensation benefits that previously earned PTO time is forfeited.

DECISION

Based on the evidence and testimony presented, and as RSA 275:43 I requires that an employer pay all wages due an employee, it is found that the employer acted

consistent with New Hampshire Statute. The claimant did not meet his burden to prove by a preponderance of the evidence that he is owed unpaid wages, it is hereby ruled that **this Wage Claim is invalid.**



Tahra White
Hearing Officer

Date of Decision: October 22, 2021

Original: Claimant
cc: Employer

TW/cb