

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

██████████  
v.

LAKES REGION CONSUMER ADVISORY BOARD

CASE NO. 63290

DECISION OF THE HEARING OFFICER

**Appearances:** ██████████ the claimant appeared pro se.  
Trisha Mahan, a member of the board of directors on behalf of  
Lakes Region Consumer Advisory Board

**Nature of Dispute:** RSA 275:43 I - Weekly, Unpaid Wages/Bonuses  
RSA 275-E: 2 - Protection of Employees Reporting Violations  
RSA 275-E: 4 - Rights and Remedies

**Claimant:** ██████████

**Employer:** Lakes Region Consumer Advisory Board

**Witnesses:** ██████████ - former employee and witness for the claimant

**Date of Hearing:** March 9, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a whistle blower complaint on August 13, 2021, which alleged abusive behavior towards the claimant and other employees. This also alleged that the claimant was intentionally not paid properly. The employer was sent notice of this claim on August 19, 2021. The claimant also filed a hearing request on September 10, 2021.

The employer was notified by the Department of Labor (DOL) via mail; dated September 30, 2021, that a pre-hearing conference would take place on October 26, 2021. The prehearing conference was held by hearing officer George A. Stewart, and discovery requests were made, and it was established that the claimant would represent herself, and the employer would select a single person from their board of directors to handle the case for them.

On November 3, 2021, a hearing notice was mailed with a hearing date of January 10, 2022. On January 7, 2022, the claimant requested a continuance of the hearing and the employer assented. A new hearing notice was mailed on January 13,

2022, with a hearing date of March 9, 2022. On February 28, 2022, a request was received to hold the hearing over video conferencing, this request was granted.

The hearing was held on March 9, 2022, with the hearing officer at the DOL office in Concord, New Hampshire, with the remaining parties appearing via Microsoft Teams video conferencing platform.

### FINDINGS OF FACT

Ms. ██████████ is a ██████████ woman who was employed by Lakes Region Consumer Advisory Board (LRCAB) from December of 2020 through October of 2021. She worked as a Peer Support Specialist. This job involved running support groups for different types of mental health triggers, as well as conflict resolution. This was considered mental health position and involved about 40 hours of training. Nearly everyone who worked at LRCAB also utilized the services provided as a "peer". This included several members of the board of directors. The claimant was paid \$9.00 per hour to perform her duties and typically worked five hours per day.

The claimant originally worked under ██████████ at the Laconia Location. ██████████ was transferred to the Concord Location, and then Ms. ██████████ was supervised by Robin Greenly. However, the main source of Ms. White's problems was the former Executive Director Patricia Fancy.

The claimant was told by Ms. Fancy that she had to be at work and ready to begin work at least 15 minutes before her scheduled shift. However, she was also told by Ms. Fancy but could not add this extra time to her time sheet calculations to be paid for it. At hearing, the claimant asserted that she was due unpaid gross hourly wages of \$97.37 for the period between January 8, 2021 and September 17, 2021. This was due to not being allowed to correctly document her time. The claimant submitted time sheets into evidence to support this claim which showed 10.82 hours of unpaid time. See *pages 13-33*.

On April 6, 2021, the claimant was on a Zoom meeting with some members of the Board of Directors and some other peers. At the time of this meeting, the claimant was living in Concord, but working in Laconia, while ██████████ was living in Laconia and working in Concord. Ms. ██████████ made a joke about the two of them waving to each other on the highway back and forth to work. Several months later Ms. Fancy presented her with a write-up for this joke and indicated she had "violated confidentiality" by mentioning where she and ██████████ lived. Ms. ██████████ felt that this was unfair because she was not written up for more than 90 days after the incident on July 13, 2021. She also felt this was unfair as it was simply a joke. See *page 10*. Ms. ██████████ also felt this was unfair and wrote a notice to Ms. Fancy about this to no avail. See *page 11-12*. As punishment for this, the claimant was forced to take four days off without pay. When Ms. ██████████ returned to work, she was placed directly under Ms. Fancy.

██████████ testified that Ms. Fancy made several people uncomfortable during the time they both worked together. ██████████ specifically mentioned an

incident involving herself and Ms. Fancy. She was on a call with her counterpart Robin Greenly, when Ms. Fancy walked up behind her. ██████████ noticed and made a mention that her "bubble" (social distancing bubble due to COVID) was about to be "popped". Ms. Fancy then came up behind her and touched her inappropriately. See page 1-2. Additionally, Ms. Fancy would frequently make comments about Ms. ██████████ body. Ms. Fancy would also frequently change the operating rules of LRCAB without notice and then get angry at employees for not following the new rules. ██████████ indicated she and Ms. ██████████ seemed to be favorite targets of Ms. Fancy, but she would go after anyone who she felt like, and it always seemed as though no one at LRCAB would stop her.

Eventually, Ms. ██████████ and ██████████ filed grievances with human resources about Ms. Fancy. This was done after ██████████ had reached out to the New Hampshire Department of Health and Human Services (DHHS) to complain about her treatment. She was advised by DHHS to file the complaint with her human resources department. See page 1.

██████████'s grievance was filed on July 26, 2021. This grievance included the instance of Ms. Fancy groping her. This also mentioned another comment made by Ms. Fancy which implied that ██████████ wished to perform a sexual act with her. This also detailed a pattern of behavior of Ms. Fancy repeatedly violating the confidentiality policies of LRCAB by discussing personal and professional information about employees behind their backs. Specifically, Ms. Fancy would discuss Robin Greenly in a negative way to ██████████ (she confirmed Ms. Fancy was doing the same in reverse as well). See pages 1-3.

██████████'s grievance was accompanied by a letter from Emily Huff, a former employee of LRCAB. This letter indicated that Ms. Fancy wrote up Ms. Huff following a shift switch that she requested following the death of her aunt. Ms. Fancy treated this as a no call-no show incident despite the LRCAB handbook indicating employees had at least one day of bereavement leave for such a situation. See page 9. Additionally, Ms. Huff approached her supervisors with a concern about one of her fellow trainees' backgrounds and how it could impact LRCAB's contracts with the State of New Hampshire. Ms. Fancy considered this a "breach of confidentiality" and again wrote up Ms. Huff. Ms. Huff indicated that the worst incident with Ms. Fancy was when she first began with LRCAB and had completed her initial training. Ms. Huff had been told that if anyone failed the final exam of the training they would be let go. She was pulled into a meeting with Ms. Fancy and her supervisor and told she had failed, and the trainers had given negative feedback about her. Several months later Ms. Fancy informed Ms. Huff this was nothing but a joke. See page 34-35.

██████████'s grievance was dated August 12, 2021. The grievance indicated that beginning on March 29, 2021, she started working on Mondays and Tuesdays at the Laconia location. When she would come in and check her temperature (per COVID protocols), she was frequently yelled at from the other room that no one heard the "beep" of the thermometer. Ms. ██████████ would call back with her temperature and then be chastised for having an "attitude". See page 36. Once after getting her very long hair cut, Ms. ██████████ was relaying the story of being given a ponytail of what had been cut off

by the hairdresser. Ms. Fancy made derogatory remarks about this practice and Ms. White's haircut in front of several people. Several people laughed at Ms. ██████████ about this. This also mentioned the April 6, 2021 incident and that Ms. ██████████ asked on April 7, 2021, not to return to the Laconia location. On April 13, 2021, Ms. ██████████ was called into a meeting with Ms. Fancy and her supervisor and asked why she did not want to return to Laconia. When she explained herself, Ms. Fancy simply threw up her hands. Ms. ██████████ indicated she would rather quit than go back to Laconia. See page 36. The claimant testified her request was granted and she only worked at Concord until the end of her time. Ms. ██████████ indicated that beginning on July 9, 2021, Ms. Fancy began coming in late on Fridays and pulling her into meetings where she would berate her performance. Ms. Fancy made sure to do this late enough in the day that Ms. ██████████ was kept past her scheduled time to leave. She also frequently did so after Ms. ██████████ had passed in her timecard and would not allow the timecard to be corrected. See page 36.

In their discovery documentation, LRCAB noted that following the board of directors' investigation into the grievances, Ms. Fancy was required to take a sexual harassment seminar (as was the entire company), as well as take one week off work with pay. Furthermore, all staff were required to take a class on working with people with "differing management styles". It was determined that a member of the Board would sit in on Ms. Sauerheber's monthly supervisor meetings for six months to ensure she was being treated fairly. There would also be random drop-ins from members of the board to ensure policies were being followed. The use of mediation for employee disputes as soon as possible after any incident was also implemented. Furthermore, a policy of recommendation for termination for employees who could not or would not attend required training as well as for employees who could not or would not set the situation to rest. However, this also resulted in ██████████ being placed under the direct supervision of Ms. Fancy. Ms. Fancy continued to come down hard on Ms. ██████████ and eventually terminated her.

Ms. Mahan testified that she was previously friends with Ms. Fancy. She also indicated she was not aware of the instances of sexual harassment. She was also not aware of the practice of staff being called in early, but not being allowed to punch in. She indicated that had she known of these practices when they were going on she would have reported them or attempted to stop them. Ms. Fancy told her about the grievance outside of their official positions which she conceded was a breach of confidentiality. Ms. Mahan did not contest any of the allegations against Ms. Fancy. She also conceded that most people who worked at LRCAB would leave for other employment instead of challenging Ms. Fancy's behavior. For example, she was chosen to represent LRCAB in this matter because she is the only person who is still on the board of directors who was also there when the incidents happened last year. She indicated it wasn't until the entire board was presented with the written grievances that they acted as a unit and took some type of corrective action.

Finally, the entire staff of LRCAB got a bonus in 2021, and that it was supposed to be based on time with the company as well as position. Ms. ██████████ was the only person in her position who received a \$50.00 bonus. The other Peer Support Specialists all received between \$200.00 and \$300.00. Additionally, another employee who had

been with the LRCAB for only a couple of months had received \$150.00. Ms. ██████████ was also paid her bonus one week after the other employees.

### DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she is owed unpaid wages. Proof by a preponderance of evidence as defined in Lab 202.05, means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not. The issue in this case is whether bonus payments are wages, if so, were wages owed and due to the claimant.

The claimant has alleged wages owed under RSA 275:43 and a violation of the NH whistleblower statute. Regarding the Whistleblower Claim, the claimant has the initial burden of establishing a prima facie case of unlawful conduct/retaliation. This requires the claimant to show: "1. [she] engaged in an act or acts protected by the statute; 2. [she] suffered an action proscribed by the statute (retaliation); and 3. there was a causal connection between the protected acts [she] engaged in and the action [she] suffered as a result of that/those protected act/s."

In this case, the claimant reported harassment and wage related grievances to her superiors in order that they could be investigated and corrected. The claimant was subject to increased harassment following this. Furthermore, the claimant was subject to punishments that were disproportionate to her alleged violations. Specifically, the claimant was accused by Ms. Fancy of violating confidentiality rules by disclosing during a call that Ms. ██████████ lived in Laconia. For this disclosure, which was made as part of a joke about passing each other on the highway in opposite directions going to and from work, the claimant lost four days of work without pay. However, when Ms. Fancy was found to have engaged in sexual harassment, she was placed on one week leave with full pay. Additionally, the claimant was the only employee in her position to receive a bonus of only \$50.00 compared to the \$200.00-300.00 that other Peer Support Specialists received.

After reviewing the testimony, including the testimony of the employer, it is clear that the claimant has sustained her burden of proof in proving that she complained of violations of law and suffered a punitive ramification.

RSA 275-E:4 allows for the Department of Labor to award the claimant back pay and fringe benefits for the employers' violation of the whistleblower statute. Given the violations of the employer it is found that the claimant should be entitled to \$200.00 for her bonus and four day's pay associated with the reprimand received.

Concerning the claimant's wage claim, the claimant is entitled to be paid for all time worked. It is found that the employer's policy of making its employees come to work 15 minutes before clocking in is a violation of RSA 275:43. The claimant is entitled to \$97.37 for the 10.82 hours she worked without pay based on her wage of \$9.00 per hour.

At the conclusion of the hearing Ms. Mahan indicated that she wished to apologize to Ms. ██████████ and did not contest any of what she or Ms. ██████████ had testified to. Ms. Mahan indicated that LRCAB is willing to compensate Ms. ██████████ for the missed wages and other penalties as decided by the DOL.

Based upon a preponderance of the evidence, and a voluntary admission of wrongdoing by the representative of LRCAB, the claimant has met her burden of proof.

### DECISION

Based on the evidence and testimony presented, it is found that the claimant successfully met her burden to prove by a preponderance of the evidence that they engaged in an act protected by RSA 275-E:2I(a) and suffered retaliation as a direct result; it is hereby ruled that this Whistleblower's Complaint is valid.

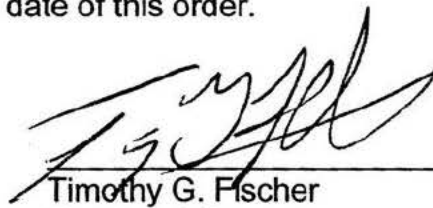
The claimant established that she, in good faith, engaged in acts protected by statute when she reported a violation of the law/rule. As a direct result of this protected reporting, the employer engaged in retaliation when it terminated the claimant's employment.

The claimant is entitled to \$380.00 in damages, comprised of the \$200.00 the claimant did not receive as part of her bonus and \$180.00 for the four days of work she was forced to miss.

Such is the Order of the Department.

Based on the evidence and testimony presented, and as RSA 275:43 I requires that an employer pay all wages due an employee. The claimant has showed by a preponderance of the evidence that wages were due in the amount of \$97.37 in back pay for the early sign-in days. The claimant's request for payment of unpaid wages is approved.

The employer is ordered to send a check in the amount of \$477.37. to this Department payable to ██████████ less any applicable taxes, for the unpaid wages to this Department within 30 days of the date of this order.

  
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Timothy G. Fischer  
Hearing Officer

Date of Decision: April 4, 2022

TGF/nd