

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

General Linen Service, L.L.C.

CASE #63300

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented (failed to appear)
Kerry Laughlin, representing the employer

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid commissions)

DATE OF HEARING: October 12, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage complaint on August 18, 2021, alleging that he was employed in outside sales for the employer's general linen service and was not paid his commissions earned on nine accounts. The total claim was \$8,500.00.

Notice of claim was sent to the employer on August 23, 2021. The employer filed an objection on September 9, 2021. The claimant requested a hearing on September 9, 2021. Notice of hearing was sent on September 13, 2021. At the appointed hour for the hearing, the claimant failed to appear. Fifteen minutes later, he still had not appeared or contacted the Department.

The notice of hearing was mailed to the claimant at 11 Friartuck Ave., Derry, NH 03038, the address he provided on his wage claim and the one used in earlier correspondence from the Department. None of the mail sent to the claimant, including the notice of hearing, was returned undelivered. It was determined that the claimant received proper notice of the hearing. The hearing proceeded in his absence, pursuant to Department Administrative Rule Lab 203.04.

FINDINGS OF FACT

The following findings are based on the testimony of Kerry Laughlin and Rodney Tillotson and matters of record in the Department file. During the course of the hearing, Mr. Tillotson acknowledged under oath that the employer's written submissions to the Department were true and accurate to the best of his

knowledge and belief, and those statements are treated herein as part of the testimony in the case.

Kerry Laughlin is the employer's human resource director and Rodney Tillotson is its director of administration and finance.

Claimant was an outside salesman for the employer. He was paid a weekly salary plus commission, under a written plan that was submitted as evidence. The claimant was fired on May 21, 2021 for gross misconduct.

In his written claim, claimant alleged that he was owed commissions on nine accounts. He did not provide a breakdown of how much was owed on each account, but alleged that the total was \$8,500.00. The employer went through the various accounts and, with reference to the written plan, testified that no commissions were due on any of the accounts. Seven were not eligible for payment because the claimant was no longer actively employed with the company at the time of the eight-week commission payouts for these accounts. Another one was an every-other-week account that, by definition, was not eligible for a commission. The remaining account was only active for five weeks at the time of claimant's termination, short of the required eight weeks, and thus was not eligible for a commission.

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).

In this case, the employer's uncontested evidence is credited. The claimant's allegations regarding unpaid commissions were unsupported by evidence at the hearing. Accordingly, it is found that the claimant failed to meet his burden of proving that he earned commissions that have not been paid.

DECISION

For the reasons stated, the claim for unpaid wages is ruled **invalid**.

October 27, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/cb