

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



Corporate Environmental Advisors
CASE #63302

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Employer, self-represented (failed to appear)

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid wages)
RSA 275:43, I — Weekly (unpaid incentive pay)
RSA 275:43, V — Weekly (unpaid vacation)
RSA 275:43, V — Weekly (unpaid expenses)

DATE OF HEARING: October 18, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage complaint on August 20, 2021, alleging that he was employed as a senior project manager for the employers environmental consulting business. He has four claims: first, that he was not paid for three pay periods from June 1, 2021 through July 15, 2021, due June 20, July 5, and July 20, 2021. The claim is for \$11,000.00. Second, that he was not paid the sales incentive of 3.5 percent of gross revenues for direct client sales he was responsible for, as provided in his offer letter dated January 5, 2019. The claim is for \$17,643.73. Third, that he was owed 55 hours of unused accrued vacation pay upon separation per the employee handbook, at his pay rate of \$57.29 per hour. The claim is for \$3,150.95. Fourth, that he was owed expenses for automobile allowance of \$300.00 per pay period at three pay periods, and cell phone allowance of \$50 per month for two months. This claim is for \$1,000.00.

Notice of claim was sent to the employer on August 24, 2021. The employer did not file an objection. The claimant requested a hearing on September 14, 2021. Notice of hearing was sent on September 17, 2021. At the appointed hour, the claimant appeared but no one appeared on behalf of the

employer. After a 15-minute waiting period, no one had appeared or called in for the employer and the hearing proceed in the employer's absence.

A review of the file showed that the original claim mistakenly listed the employer's state as NH instead of MA; however, the city (Westborough) and zip code (01581) were correctly listed. Unfortunately, the error was not picked up initially and the notice of claim was addressed to the employer with city-state-zip showing as Westborough, NH 01581. The claimant subsequently noticed the error and gave the Department the correct address. The notice of hearing was sent to the employer at the correct address.

Neither the notice of claim nor the notice of hearing was returned to the Department as undelivered. Given that the notice of hearing was correctly addressed, it is presumed that the employer received that notice. However, it is unknown whether the employer received the notice of claim, which included a copy of the original wage claim. Due to the apparent lack of proper notice, the hearing was converted to a pre-hearing conference for purpose of facilitating the resolution of the claim with preliminary findings but without making any final decision as to the merits.

A letter reviewing the case history and the preliminary findings was mailed to both parties on October 20, 2021. The employer was given twenty days from the date of this letter in which to file a response to the original wage claim, a copy of which was also included with this letter. The employer was advised that if he objected to the claims in whole or in part, a hearing on the merits would be scheduled as to the contested claims, and new notices would be sent out in due course. The employer was advised that, if no response was received from the employer within such 20 days, or if the employer notified the Department that it did not contest the claim, a final decision would be issued without further hearing.

The letter was addressed to the employer as:

Campisi Environmental Associates, Inc.
d/b/a Corporate Environmental Associates
Attn: Joseph Campisi
21 Main St., Ste. 201
Westborough, MA 01581

It was not returned to the Department as undelivered.

The employer did not respond within twenty days nor did it contact the Department. Accordingly, the preliminary findings set forth in that letter are hereby adopted as official findings, and the following decision is rendered pursuant to RSA 275:51, V. That statute provides, in pertinent part,

A wage claim may be filed by an employee ... no later than 36 months from the date the wages were due. The commissioner shall notify the employer by serving upon the employer a copy of such claim and an order to file with the commissioner within 10 days from the receipt of such notice any objections to such claim specifying the grounds

therefor. Service may be by certified mail with return receipt. If objection is not made within 10 days, the commissioner may order that payment be made in accordance with the claim....

FINDINGS OF FACT

The following findings are based on the testimony of the claimant, claimant's exhibits, and matters of record in the Department file. During the course of the hearing, the claimant acknowledged under oath that his written submissions to the Department were true, and those statements are treated herein as part of the testimony in the case.

Claimant is █████ years old and lives in █████. He has a Bachelor of Science degree in Hydrology from the University of New Hampshire, awarded in 1987. He is a certified professional geologist in this state. Since graduation, he has worked in the field of environmental consulting. He was hired by the employer in January 2019 and his first day of work was February 5, 2019.

Wage claim: His initial salary was \$105,000 per year, based on a nominal five-day, 40-hour work week. In July 2020, claimant's work week was changed to a nominal four-day 32-hour work week; his salary from that point forward was \$88,000.00 per year. He explained that, although his gross salary was reduced, the imputed hourly rate, given the shorter work week, was equivalent to a raise in his annual salary from \$105,000 to \$110,000, i.e., $32/40$ was the same as the ratio $88,000/110,000$. Claimant kept track of his hours worked, however, he received the same fixed salary per pay period regardless of whether he worked more or less than the nominal 32 hours. Claimant was paid bi-monthly, \$3,666.67 per pay period. Payment for the 1st through the 15th of the month was made on the 20th, and payment for the 16th through the end of the month was made on the 5th. He was paid by direct deposit.

In June 2021, the company stopped paying the claimant. The last check he received covered the second half of May 2021. He resigned effective July 15, 2021. At that point, he was owed his regular pay for the three pay periods spanning June 1 through July 15, 2021, totaling \$11,000.00.

Sales incentive: Pursuant to the terms of the offer of employment letter, the claimant was eligible to receive a sales incentive of 3.5 percent of gross project revenues for direct client sales that he was responsible for booking. He kept track of his sales in a spreadsheet showing a total of \$504,106.69 and yielding \$17,643.73 at the 3.5 percent rate. He submitted the document to the employer via email on April 2, 2021, and the employer's president, Joseph Campisi, responded later that day that the company should be able to pay these out within the next two weeks. However, claimant never received the sales incentive payment.

Vacation payout: Pursuant to the terms of the offer of employment letter, the claimant was entitled to three weeks (15 days) of vacation per year. Pursuant to the employee handbook, after working two years, he was entitled to an additional two days per year, giving a total of 17 days (136 hours) per year, or 5.67 hours per pay period. The employee handbook also provided for a payout of unused vacation time upon separation from the company. Claimant worked 13 pay periods in 2021 up until his resignation July 15, 2021, times 5.67 hours per pay period gives 73.71 hours. He adjusted this downward by 0.8 to account for his 32-hour work week, to give 59 hours. From this, he subtracted four hours that he had used already, leaving 55 hours of unused vacation pay. He then multiplied this by his imputed hourly rate to get a total vacation payout due of \$3,150.95.

Expense allowance reimbursement. Pursuant to the terms of the offer of employment letter, the claimant was to receive an automotive travel allowance of \$300.00 per pay period and mobile phone allowance of \$50.00 per month. He was owed the auto allowance for the last three pay periods, totaling \$900.00, and the cell phone allowance the last two months (mobile phone bills are on a monthly basis), totaling \$100.00. The total expense claim was for \$1,000.00.

Claimant's Exhibits. After being sworn in, the claimant submitted a number of documents in support of his claim. He testified that each of these documents was either created by the employer or was provided to the employer and receipt was acknowledged by the Mr. Campisi.

Cl. Exh. 1A is a paystub dated June 18, 2021 covering the pay period from June 1, 2021 through June 15, 2021. Claimant testified that this was the last payment he received from the employer. Cl. Exh. 1B is a paystub also dated July 8, 2021 covering the same pay period as Cl. Exh. 1A. Claimant testified that he never received a check corresponding to this paystub.

Cl. Exh. 2 is the offer of employment letter signed by Mr. Campisi as president of the company and by the claimant, dated January 7, 2019.

Cl. Exh. 3A is a one-page spreadsheet showing claimant's direct client bookings brought to fruition since his start date. Exh. 3B is an email thread between claimant and Mr. Campisi dated April 2, 2021 in which Mr. Campisi appears to acknowledge receipt of the spreadsheet and agrees to make the requested incentive payments within the next two weeks.

Cl. Exh. 4 is an excerpt from the company's employee handbook covering policies on holiday and vacation pay and payouts on separation.

Cl. Exh. 5A is an email from claimant to Mr. Campisi dated July 15, 2021 confirming that claimant is resigning that day and requesting payment for the three payroll periods due June 20, July 5, and July 20, 2021, a payout for

claimant's unused 55 hours a vacation pay, and payment of the incentive plan amounts he was due. The letter references two attached exhibits: a letter of resignation and a spreadsheet. Cl. Exh. 5B is a formal letter of resignation effective July 15, 2021.

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).

The claimant's testimony in support of each of his claims was clear and well-reasoned. It was also supported by documents that appeared to corroborate it. From Cl. Exh. 3A and 3B, it appears that the employer conceded to the claimant that he was owed the amount claimed for the incentive payments, which is the largest part of his claim. It further appears that the employer acknowledged having financial difficulties, which would give further credence to all of the claims.

It is therefore found that the claimant met his burden of proof with respect to all four claims.

DECISION

Based on the foregoing discussion, finding that the claimant met his burden of proof with respect to the four claims set forth in his wage claim, totaling \$32,794.68, it is hereby ruled that the claims are **valid** as submitted.

The employer is hereby ordered to send a check to the Department of Labor, payable to ██████████ in the amount of \$32,794.68, less any applicable taxes, within 30 days of the date of this Order

November 12, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/js