

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Coleman Concrete, Inc.
CASE #63306

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented (failed to appear)
Curtis Coleman, representing the employer

NATURE OF DISPUTE: RSA 275:43, V — Weekly (unpaid sick time/vacation)

DATE OF HEARING: October 14, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage complaint on August 22, 2021, alleging that he was employed as a truck driver for the employer's concrete-supply business and, upon leaving the company, was not paid for his two days of unused sick time and his one week of unused vacation time. The sick time claim is for \$340.00 and the vacation time claim is for \$850.00. Notice of claim was sent to the employer on August 25, 2021. The employer did not file an objection. The claimant requested a hearing on September 13, 2021. Notice of the hearing was sent on September 17, 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 the address he provided on his wage claim. The notice was not returned undelivered. It was determined that the claimant had 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 Curtis Coleman and matters of record in the Department file.

Curtis Coleman, 47, is one of the owners of the employer, a family business. He has been involved in company operations for about 22 years. The company has about 85 employees.

Mr. Coleman testified that the claimant was hired as a seasonal employee in 2017 and brought on full time in 2019. He drove cement trucks. He was an hourly employee and generally worked weekdays from 6:30 a.m. to 4:30 p.m.

Toward the end of February 2021, claimant stopped showing up for work or calling in. He was taken off the schedule in early March 2021 and was no longer considered an employee. A couple of months later he asked for work and was rehired on May 18, 2021. Starting July 7, 2021 he was a no-call, no-show. He was taken off the schedule on July 10, 2021 and his employment was again terminated. In August 2021 he asked for work again but the company declined to rehire him.

Mr. Coleman testified that, pursuant to policies contained in its employee handbook, the company does not pay out unused sick time when employee's separate from the company. The company does pay out unused accrued vacation time, but only if an employee gives two weeks' notice and works through the end of the notice period. The claimant was given written notice of these policies. He was not entitled to a payout of sick time or vacation time.

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 testimony is credited. The claimant's allegations regarding unpaid sick time and vacation time were unsupported by evidence at the hearing. Accordingly, it is found that the claimant failed to meet his burden of proving that he was owed sick time or vacation time with his final wages.

DECISION

As RSA 275:43, V considers vacation pay and sick pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay or sick pay, it is hereby ruled that the Wage Claim is **invalid**.

October 29, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/cb