

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v.

Stonehill Environmental, Inc.
CASE #63437

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Employer failed to appear

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid wages)
RSA 275:43-b — Payment of Salaried Employees
(unpaid salary)
RSA 275:43, V — Weekly (unpaid employee
expenses)
RSA 275:44, IV — Employees Separated from Payroll
before Paydays (Liquidated Damages)

DATE OF HEARING: November 17, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on October 8, 2021, alleging that she was employed as an environmental scientist for the employer's consulting business in Portsmouth, Stonehill Environmental, Inc., owner/CEO Joseph S. Campisi. The claimant alleged that she was not paid her regular bimonthly salary for four pay periods from June 1, 2021 through July 30, 2021 and did not receive employee expense reimbursements for the first three of those pay periods. She did receive an irregular payment by wire transfer on July 16, 2021 of \$2,900.00 (net \$2,885.00 after subtracting the \$15.00 wire fee). Claimant stopped working for the employer on July 30, 2021. After applying the wire transfer to the amount unpaid, her total claim was for \$4,805.27. She also requested an award of liquidated damages in the same amount, as the amount due still remained unpaid on the date she filed her claim.

Notice of claim was sent to the employer on September 14, 2021. The employer did not file an objection. Claimant requested a hearing on October 4, 2021 and one was scheduled by hearing notice sent October 8, 2021.

At the appointed hour for the hearing, the employer failed to appear. Fifteen minutes later, no one had appeared for the employer or contacted the Department. The notice of hearing was mailed to the employer's mailing and corporate addresses provided on the wage claim, Joseph S. Campisi, Stonehill Environmental, 600 State St., Ste. 2, Portsmouth 03801 and Stonehill Environmental, Attn. Human Resources, 21 East Main St., Ste. 201, Westborough, MA 01581. The notices were not returned undelivered. Claimant testified that after she separated from the company, it remained in business. It was determined that the employer received proper notice of the hearing. The hearing proceeded in the employer's absence, pursuant to Department Administrative Rule Lab 203.04.

FINDINGS OF FACT

The following findings are based on the testimony of the claimant, exhibits she offered in evidence, and matters of record in the Department file. The claimant acknowledged under oath that her written submissions to the Department were true and accurate to the best of her knowledge and belief, and those statements are treated herein as part of the testimony in the case.

Claimant is 25 year old and lives in Kittery, Maine. She has a bachelor of science degree in environmental science from University of Massachusetts at Amherst, awarded in May 2018. Prior to working for the employer, she worked for another environmental consulting firm, from which she was laid off in April 2020 due to COVID-19.

The claimant was hired as by the employer in August 2020 and started work in September. Pursuant the offer-of-employment letter dated August 6, 2020, her title was Staff Environmental Scientist to work out of the employer's subsidiary office in Portsmouth. As the letter explained, Stonehill Environmental was a subsidiary of Campisi Environmental Associates, Inc., which operated the Portsmouth office. Claimant served as a staff technical resource for the employer's environmental risk consulting practice. She was responsible for providing both field and office support on projects involving environmental field investigations, groundwater sampling, fuel oil spill response, due diligence, and remediation. She was expected to produce at least 85 percent billable hours.

Claimant's bimonthly salary was \$1,875.00. She was also allowed reimbursement for expenses chargeable to the client and also overhead expenses associated with her work. She was generally paid a week or two after the end of the corresponding bimonthly pay period, by direct deposit. She testified that about 70 percent of her time was spent in field work at residential and commercial sites and the remainder spent working from home (due to COVID-19) in data analysis, assessment, preparing reports, and other office tasks. She kept track of time and expenses electronically via a computer application.

She testified that, starting in May 2021, the company fell behind in making its payroll. Payment for the first half of May was two days late. Payment for the

second half of May came at the end of June. She never received payment for June or July 2021.

Claimant did not have firsthand knowledge of why the company was late with the May payroll and stopped altogether after that, however, it was her understanding that it was due to an issue with a capital investment group that was not forwarding to the company the cash receipts from the company's clients. She testified that, in addition not making payroll, the company was not able to pay its contractors in a timely fashion, and some of them were refusing to continue providing services to the company.

In an email to all staff dated July 14, 2021, company CEO Joseph Campisi acknowledged two missed payrolls and that the lack of pay had been a financial strain on everyone. He said the company was looking for funding from a new factoring company, and described various other efforts the company was making to improve the situation. The company was expecting to "net somewhere between \$600K and \$900K between July 22 and 30. At that juncture we will be able to pay at least two payrolls....We also have \$1 million that is coming from Alpha Financial Solutions. This will likely come in during the same time frame as above. This will enable us to catch up with payroll and pay a good chunk of vendor bills." In the meantime, "even before payroll, we can likely help 5 or 6 staff with short term needs." Email to all staff from Joseph Campisi, dated July 14, 2021 (claimant's exhibit).

Claimant responded by email the next day, stating that she was presently owed for three pay periods plus job-related expenses, totaling \$5,815.27. In a follow-up email the next day, she advised Mr. Campisi that she would not be able to do further work until she was paid the full amount she was owed as of July 15, 2021. On July 16, 2021, claimant received a wire transfer in the amount of \$2,900.00 gross, net \$2,885.00 after subtracting the wire fee.

Claimant testified that, although this was only about half of what she was then owed, she told the employer she would continue working through July 30, 2021. In an email dated July 22, 2021, Mr. Campisi wrote, in pertinent part, "As discussed, the firm intends to lay you off at the close of business on July 30, 2021 due to a challenging business climate." She testified that Mr. Campisi subsequently agreed that the layoff would be deemed a voluntary resignation, effective July 30, 2021.

Claimant testified that she submitted to the employer her hours for the second half of July in the usual way. Adding the unpaid salary for the second half of July (\$1875.00) to the previous unpaid wage total of \$5,815.27 and crediting the wire payment of \$2,885.00, she testified that the total amount of unpaid wages at her separation from the company was \$4,805.27.

Claimant testified that around the time she and others decided to separate from the company due to non-payment, the company was looking to hire additional staff. She also testified that the company made at least one payroll in August 2021. The company was still in operation.

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).

Claim for unpaid wages. The claimant's testimony regarding the unpaid salary and expenses was clear and well-reasoned. It was also supported by documentary evidence that corroborated the fact that the employer was not making payroll. Responding to the claimant's statement of unpaid wages and expenses as of July 15, 2021, Mr. Campisi did not contest the amount claimed. The employer's email also acknowledged having financial difficulties, which gave further credence to her testimony. The claimant met her burden of proof as to the underlying wage claim to the extent of \$4,805.27.

Claim for liquidated damages. RSA 275:44 provides, in pertinent part,

IV. If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller.

Thus, an award of liquidated damages for improper withholding of wages requires a finding that the employer acted "willfully and without good cause." Our Supreme Court has construed this expression as a unitary phrase, meaning "voluntarily, with knowledge that the wages are owed and despite financial ability to pay them." Ives v. Manchester Subaru, Inc. (N.H. 1985) (emphasis added).

The evidence showed that the employer was aware that the wages were owed to the claimant. However, to justify an award of liquidated damages, it also must be found that the employer did not pay the wages even though it had the financial ability to pay them.

Although the evidence showed that the employer was having financial difficulties with payroll and vendor payments, the evidence also showed that the it was expecting a fresh infusion of capital during the month of July and that the company made decisions to hire and pay additional employees in August 2021. It is therefore found that the claimant met her burden of proving that the employer voluntarily refused to pay the claimant her final wages, knowing that they were owed and having the financial ability to pay them.

Whether the claimant is deemed to have been laid off or resigned on July 30, 2021, her final wages were due by the next regular payday, which was August 15, 2021. For each day after that during which the wages remained unpaid (excluding Sundays and holidays), she was entitled to ten percent of the

underlying amount, up to a maximum amount capped at the underlying amount. In this case, more than 10 countable days have elapsed, and therefore the claimant is entitled to the maximum amount, which equals the amount of the underlying claim for wages due.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43-b requires that a salaried employee received her salary, in full, for any pay period in which she performs any work, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all wages/salary due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$7,500.00 less the irregular payment of \$2,885.00 net, which leaves a balance of \$4,615.00.

As RSA 275:43, V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she was not paid all employee expenses due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$190.27

The unpaid salary and expenses add up to \$4,805.27.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the timeframe required by statute, and as this Department finds that the claimant proved by a preponderance of the evidence that the employer willfully and without good cause failed to pay his wages due in the timeframe required by statute, it is hereby ruled that the employer is liable to the claimant for liquidated damages of \$4,805.27, assessed at 10% of the unpaid wages due per day for each countable day of nonpayment past the statutory limit until equal to the amount of wages due.

The combined amount of the unpaid wages and liquidated damage award is \$9,610.54.

The employer is hereby ordered to send a check to the Labor Department, payable to ██████████ in the amount of \$9,610.54 (less applicable deductions applied only to the for the unpaid wage component of \$4,625.00). within 30 days of the date of this Order.

December 2, 2021
Date of Decision


George A. Stewart, Hearing Officer

GAS/cb