

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


v.

Water-Tite Construction Company
CASE #63520

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented, did not appear
Jason Bourgeois, representing the employer

NATURE OF DISPUTE: RSA 275:43 I — Weekly, Unpaid Wages

DATE OF HEARING: December 15, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on September 28, 2021, alleging that he was owed \$806.25 in unpaid wages.

Notice of the claim was sent to the employer on September 30, 2021. The employer filed an objection on October 1, 2021 alleging that the claimant had been paid. The claimant requested a hearing October 19, 2021.

The claimant did not appear for the hearing. A review of the file indicated that the notice of hearing was mailed to the claimant at the address he provided in the original claim and was not returned to the Department as undeliverable. It was therefore determined that the claimant received adequate notice of the hearing. After waiting 15 minutes for a delayed arrival or other communication from the claimant, the hearing proceeded in his absence, consistent with administrative rule Lab 203.04.

The employer's representative was advised that it was the claimant's burden to prove the allegations in his claim. He was further advised that employer was not required to present rebuttal evidence unless and until the claimant presented testimony or evidence in support of his claim.

FINDINGS OF FACT

The following findings are based on matters of record in the Department file.

The claimant asked for \$806.25 in owed wages. No documentation of how that number was reached was provided. The employer's objection, received at the Department on October 1, 2021 provided evidence that he paid the claimant for the work performed.

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).

RSA 275:43 I provides, in pertinent part,

I. Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis, or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis...

Because the claimant failed to appear at the hearing and offer proof to support his allegations, it is not necessary to consider whether those allegations, if credited, would have been sufficient to support the wage claim under RSA 275:43, I.

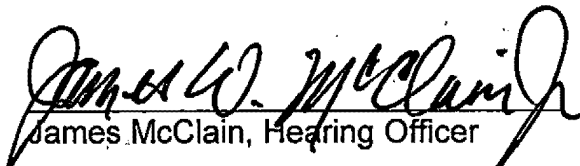
The employer's un rebutted testimony that the employer paid wages to the claimant is persuasive. In light of this testimony, the claimant failed to meet his burden of proving that he was not paid in accordance with RSA 275:43 I.

DECISION

The claimant failed to appear at the hearing and offered no evidence to support his allegations. The employer presented credible evidence that the employer paid the claimant his wages.

The wage claim is found to be **invalid**.

January 3, 2022
Date of Decision


James McClain, Hearing Officer

JM/cb