

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████ & ██████████

v.

PT Wilson, PLLC d/b/a Great Outdoors Pediatric Dentistry

Case Nos.: 63568 & 63565

DECISION OF THE HEARING OFFICER

Appearances:

██████████ Claimant
██████████ Claimant
Patrick Wilson, Owner- Great Outdoors Pediatric Dentistry

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:43-b - Weekly, Unpaid Salary

Date of Hearing: December 23, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimants all the wages they allege are due. Specifically, the claimants assert that they are owed salary. Ms. ██████████ asserts that the total amount of her claim is \$1,120.00. Ms. ██████████ asserts the total amount of her claim as \$850.00. The employer disputes that either claimant is owed wages.

Ms. ██████████ and Ms. ██████████ filed Wage Claims with the Department on October 6, 2021. A Notice of Wage Claim was forwarded to the employer on October 7, 2021. The employer's objection to the claim was received by the Department on October 18, 2019. On October 18 and 20, 2021 the claimants requested a hearing on the contested wages. Accordingly, a hearing was scheduled for December 23, 2021 at 8:30 am.

Prior to the commencement of the hearings, all parties agreed to a consolidated hearing and consolidated decision. Therefore, pursuant to Lab 203.08 it is found that the interests of justice shall be better served without substantial prejudice to the rights of any party to consolidate these two cases preserving for all parties the right of appeal from the single decision rendered.

FINDINGS OF FACT

██████████ is an office manager who resides in Scarborough, Maine. Ms. ██████████ worked for the employer for six- and one-half years as the office manager of

Great Outdoors Pediatric Dentistry in Somersworth, New Hampshire. The Somersworth, New Hampshire facility is an outpatient dental practice. Ms. [REDACTED] was a salaried employee who earned \$1,120.00 per week. She worked at least 35 hours a week.

Ms. [REDACTED] wage claim reads that she did not receive her last salary paycheck on September 30, 2021 as expected. She testified that she was working from home the week of September 20 from September 20 through September 22 due to exposure to "COVID". Ms. [REDACTED] testified that she verbally informed the employer September 19, 2021 that her husband had tested positive and per CDC guidelines she would quarantine and work remotely.

The employer acknowledged he gave Ms. [REDACTED] the use of a computer to work from home as needed. The employer's written objection indicates that Ms. [REDACTED] was not working from home but "was seeking alternative employment and going to job interviews during her supposed quarantine".

Ms. [REDACTED] testified that on September 22, 2021 the employer saw her personal e-mail on a work computer, discovered she was seeking another job and fired her that day via text message. The employer acknowledged this as fact. Furthermore, the employer acknowledged Ms. [REDACTED] was not paid her salary for the week of September 20 – 26, 2021.

Ms. [REDACTED] is a patient coordinator who resides who resides in Buxton, Maine. She was employed as the patient coordinator for Great Outdoors Pediatric Dentistry for three- and one-half years. Ms. [REDACTED] testified that her weekly salary was \$850.00 per week. Ms. [REDACTED] is also Ms. [REDACTED] daughter.

Ms. [REDACTED] testified that her mother's husband tested positive for "COVID" September 19, 2021. Because she was a close contact with her mother's husband, Ms. [REDACTED] e-mails state that she followed the employer's request to get tested for "COVID" and she communicated her plan to work remotely to the employer. The employer denies this, writing that Ms. [REDACTED] did not contact him or work remotely.

The employer acknowledged not paying Ms. [REDACTED] and her termination. The employer testified that he was upset with Ms. [REDACTED] for not informing him of Ms. [REDACTED] job search.

The employer's evidence consists of e-mails and testimony. The employer's objection contains two e-mails, one for each claimant. Regarding Ms. [REDACTED] the employer wrote, "[T]he employee claimed to have contact with someone with covid. She also claimed to be working from home but she was seeking alternative employment and going to job interviews during her supposed quarantine. [REDACTED] was not working remotely as she claimed." Regarding Ms. [REDACTED] "[T]he employee claimed to have contact with someone with covid. [REDACTED] did not contact me or work remotely during this time. She was not working during (sic) her quarantine and I do not pay medical leave wages."

The employer sent an e-mail to the Department October 21, 2021. That e-mail reads, in part, "... [REDACTED] and [REDACTED] claim to have been exposed to COVID by the same familiar person. [REDACTED] claims this person had two positive COVID tests on two separate occasions. If she can produce these tests and they can be authenticated, I will pay the three days wages I owe them before their resignation. If she cannot or will not, we can proceed to the hearing."

The employer testified that he recommended the claimants work from home after receiving the September 20 text message from Ms. ██████████. The employer also testified he was upset with Ms. ██████████ over a scheduling issue that occurred the previous Friday, September 17 and that he believed the September 20 text message was dubious and was a response to the September 17 reprimand.

In response the claimants testified they could not get a test until September 23, the day after they were terminated.

DISCUSSION AND CONCLUSIONS

The claimants have the burden of proof in these matters to show by a preponderance of the evidence that they are owed wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The parties agree on the facts of this case. The claimants and the employer acknowledge that the claimants were not paid their last week's wages. Both claimants were salaried employees. They were paid weekly and grossed the same amount each pay period. No employee handbooks were submitted into evidence. There was no evidence that the claimants were terminated for cause. It was evidenced at hearing, that the employee/employer relationship with Ms. ██████████ had deteriorated over a number of weeks prior to her termination. It was also clear that Ms. ██████████ was a casualty of the rift between Ms. ██████████ and the employer.


The law required that unless fired for cause, a salaried employee shall be paid her entire salary for any work week where she performs any work. In this case, it is found that the work week began on September 20, 2021. Both claimants were instructed that they needed to remain out of work due to Covid quarantine. Both claimants performed work while at home. The employer testified that if he had not terminated the claimants he would have paid them their entire salary during this Covid quarantine period. Given that the employer has not demonstrated that there was an exception for payment of the salary as outlined by RSA 275:43b, the employer must pay each claimant her last week of salary for the partial week worked prior to their termination.

The Department finds that the claimants have proven by a preponderance of the evidence that they were not paid the salary they are owed. RSA 275:43 I requires that an employer pay all wages due an employee within 8 days of the expiration of the work week. RSA 275:43-b requires that a salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked.

DECISION

Based on the testimony and evidence presented, this Department finds the claimants met their burden to prove by a preponderance of evidence that they are owed additional wages. It is hereby ruled that this Wage Claim is valid.

The employer is ordered to send two checks to this Department. One shall be payable to ██████████ in the amount of \$1,120.00 and one shall be payable to ██████████ in the amount of \$850.00, less any applicable taxes, within 30 days of the date of this order.


James McClain, Jr.
Hearing Officer

Date of Decision: January 10, 2022

Original: Claimant
cc: Employer

JM/cb