

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

**Emily Philibotte**

**v.**

**Pleasant View Center**  
**Case No.: 63593**

**DECISION OF THE HEARING OFFICER**

**Appearances:** [REDACTED] Claimant

**Employer:** Trisha Vien – Human Resources Manager, Pleasant View Center  
Steven Woods – Nursing Home Administrator

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

**Date of Hearing:** January 4, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issue concerns the employer's alleged failure to pay the claimant all the wages due to her. Specifically, the claimant asserts that she is owed base pay for hours worked under a shift differential.

The claimant filed a Wage Claim with the Department on September 23, 2021 for \$1,137.72 in unpaid wages. A Notice of Wage Claim was forwarded to the employer on October 8, 2021. The employer filed no objection. The claimant requested a hearing on the disputed claim, on October 28, 2021. Hearing Notices were forwarded to the parties on November 3, 2021.

**FINDINGS OF FACT**

The claimant worked as a licensed nursing assistant for the employer from mid-June 2021 to the end of August 2021. The claimant submitted her wage claim because she believed she did not receive her shift differential. As part of her testimony at hearing the claimant submitted pay stubs that were annotated to highlight the hours worked under a shift differential. The Earnings Summary on each pay stub lists the total hours worked under Regular Earnings (base pay), the hours worked under a \$2.50 Shift differential, the hours worked under a \$1.00 differential and the hours worked under a Shift Pick up bonus.

For example, the claimant's September 3, 2021 pay stub for the pay period of 8/15/21 to 8/28/21 lists a total of 7.75 hours worked under Regular Earnings, 7.5 hours under the \$2.50 differential, 0 hours under the \$1.00 differential and 0 hours under the Shift pick up bonus. The stub does total the 7.75 hours and the 7.5 for a total of 15.25 hours.

The claimant's Regular Earnings base pay on the September 3 stub was \$17.00 per hour. The pay stub shows regular Earnings of \$131.75 (\$17/hr. x 7.75 hrs.). The employer explained that in the pay period, the \$2.50 shift differential applied to 7.5 of the total 7.75 hours worked. The pay stub lists total \$2.50 differential earnings of \$18.75 (\$2.50 x 7.5 hrs.). The pay stub lists total earnings of \$150.50.

Under questioning by the hearing officer, the claimant agreed that she only worked 7.75 hours, not 15.25 hours, and that the amount paid was correct.

The previous stub was dated August 20, 2021 for the pay period of 8/1/21 to 8/14/21. The claimant annotated the pay stub to indicate that the total of Regular Earnings hours (8) was correct but that the rate of pay should have been \$17.00 not \$16.00 per hour and the total paid \$136.00 and not \$128.00. No hours were listed under the shift differentials.

Another stub for the same date (8/20/21) was submitted showing 54.5 hours at Regular Earnings of \$926.50 (\$17/hr.), 15.25 hours at the \$2.50 differential for a total of \$38.13, 8 hours at the \$1 differential for a total of \$8.00 and a Shift Pick up bonus of \$200.00 (0 hours listed). This stub listed total hours of 77.25 of total earnings of \$1,172.63. The claimant annotated the stub to indicate that she believed she should have been paid \$19.50 (\$17 base pay and \$2.50 differential) for the 15.25 hours listed under the \$2.50 differential and \$144.00 for the 8 hours listed under the \$1 differential (\$17/hr. + \$1 differential). She did not comment on receiving the \$200 bonus.

Under questioning by the hearing officer, the claimant agreed she had only worked 54.5 hours in the period and not 77.25 hours.

The same process was repeated for the remaining pay stubs. The claimant agreed that the Regular Earnings hours were the total hours she worked in each pay period and further agreed that upon clarification she had been paid correctly.

At this point the hearing officer concluded the hearing.

### **DISCUSSION AND CONCLUSIONS**

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she is owed additional 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.

RSA 275:43 I requires that an employer pay all wages due an employee, when due.

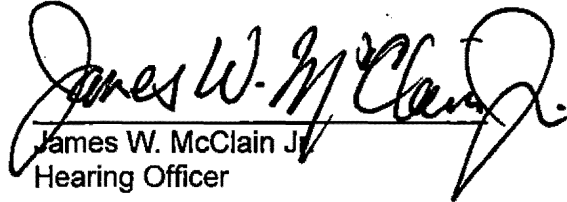
The employer has a policy regarding shift differential pay. The policy was in effect at the time the claimant stopped working for the employer in August 2021. The claimant did not state that she was unaware of the policy. The employer credibly explained the application of the policy and the claimant accepted this explanation. The claimant agreed that the Regular Earnings hours were the total hours she worked in each pay period and further agreed that upon clarification she had been paid correctly.

After reviewing all the evidence, the employer has provided persuasive evidence that the shift differential policy was correctly applied in this case. The claimant has

agreed that the shift differential policy was correctly applied in this case. The claimant has agreed that she was paid correctly.

**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 this Department finds that the claimant, by a preponderance of the evidence, was paid correctly, the claimant is not entitled to \$1,137.72 in unpaid wages. It is hereby ruled that the Wage Claim is invalid.

  
James W. McClain Jr.  
Hearing Officer

Date of Decision: January 18, 2022

Original:            Claimant  
cc:                    Employer

JWM/cb