

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Mark St. James Masonry

Case No. 63604

DECISION OF THE HEARING OFFICER

Appearances: [REDACTED] Claimant – appeared telephonically

Mark Mullen, Employer

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

Date of Hearing: January 18, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all the wages he alleges are due. Specifically, Mr. [REDACTED] asserts that the total amount of his claim is \$550.00.

Mr. [REDACTED] filed a Wage Claim with the Department on October 12, 2021. A Notice of Wage Claim was forwarded to the employer on October 13, 2021. The employer failed to file an objection to the claim. On November 1, 2021, the claimant requested a hearing on the contested wages. Accordingly, the hearing notice was dated November 9, 2021, and a hearing was scheduled for January 18, 2022, at 8:30 am.

FINDINGS OF FACT

On October 12, 2021, the claimant filed a wage claim with the Department of Labor. The wage claim asserts that the claimant was employed by the employer as a stone mason from mid-May to mid-July 2021. The rate of pay was \$25.00 per hour. The claimant asserts he quit in July and has not received his last week's wages as required under New Hampshire law.

The claimant testified that he was late to work one day and decided to quit. He text messaged the employer and was told he could pick up his tools and previous week's pay at the jobsite. The claimant testified that he retrieved his tools and paycheck.

The claimant testified he was due wages for 22 hours worked during his final week on the job. The employer testified that while he disputed the number of hours, he mailed a check for the wages and hours owed to the address the claimant had given him at time of hire.

The claimant testified that the address given to the employer at time of hire was not his current address and that he had asked the employer to reissue the check. The employer testified that he eventually stopped payment on the check.

DISCUSSION AND CONCLUSIONS

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

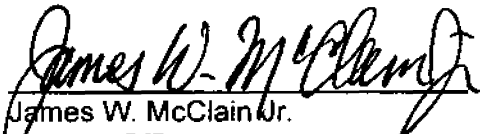
RSA 275:43 I requires that an employer pay all wages due an employee within 8 days of the expiration of the work week. The employer did not do so, according to their own testimony. The employer testified that he mailed the check to the address given, the check had not been returned, the check had not been cashed and that he had stopped payment on the check.

After reviewing the evidence and testimony, the claimant's wage claim with regards to nonpayment of wages is found to be persuasive. Specifically, the claimant testified that he is owed 22 hours and has not been paid. The employer testified he stopped payment on the check. The claimant was credible, and his testimony is adopted. The claimant is owed wages for the time worked.

DECISION

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

The employer is ordered to send a check to this Department payable to ██████████ in the amount of \$550.00, less any applicable taxes, within 30 days of the date of this order.


James W. McClain Jr.
Hearing Officer

Date of Decision: January 25, 2022

Original: Claimant
cc: Employer

JWM/nd