

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v.

Green Apple Resources

Case No.: 63659

DECISION OF THE HEARING OFFICER

Appearances: Claimant- failed to appear
Kim Perkins, EA - Employer

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:44 IV – Employees Separated Form Payroll Before Pay
Days, Liquidated Damages

Date of Hearing: January 11, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The current issue concerns the employer's alleged failure to pay the claimant all wages due. Specifically, the claimant filed a Wage Claim with the Department on October 12, 2021, asserting unpaid wages in the amount of \$117.00. The employer's objection to the claim was received by the Department on November 3, 2021. The employer submitted evidence documenting payment to the claimant. The claimant subsequently requested a hearing on the contested wages.

The formal hearing was scheduled at the New Hampshire Department of Labor for January 11, 2022, at 8:30 am. The employer appeared for the scheduled hearing. Despite having proper notice, the claimant did not appear for the scheduled hearing. After waiting more than fifteen minutes pursuant to Lab Rule 203.04, the hearing proceeded in the claimant's absence.

The employer was informed that the burden of proof in the claim remained with the claimant, despite her failure to appear. The employer was informed that she was under no obligation to provide testimony. The employer chose not to provide testimony beyond the objection that was previously submitted.

FINDINGS OF FACT

As there was no testimony at the hearing, the facts are taken from the written record. The claimant filed a Wage Claim with the Department of Labor on October 21, 2021. In her wage claim, the claimant alleges that she is owed \$117.00 for six hours of unpaid wages. The claimant failed to appear for the hearing to provide any additional testimony or evidence in support of her claim.

The employer is a bookkeeping, tax preparation and payroll services company. The claimant was a bookkeeper. The employer asserts that the claimant was paid the disputed wages. In support of this testimony, the employer provided the claimant's final pay stub, a letter detailing the claimant's final work week and text messages supporting the employer's account of the claimant's final work week.

The claimant's final work week was October 4 – October 8, 2021. The employer noted that the claimant's final pay stub showed the claimant was paid for 40 hours but had only worked 33.75 hours. The employer asserted in her response that the claimant had therefore been paid for the disputed six hours.

The employer provided detailed documentation of the claimant's hours in her response. The claimant never refuted the employer's documentation.

The employer asserts that the claimant has been paid for all wages earned.

DISCUSSION AND CONCLUSIONS

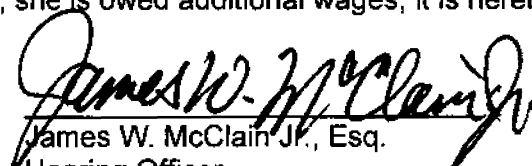
The claimant has the burden of proof in these matters to show by a preponderance of the evidence that she is owed additional wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant failed to appear at the hearing to provide additional testimony beyond her written submission. The employer's written documentation presented was credible. The employer was able to demonstrate that the claimant had been paid for 6.25 hours she had not worked. Fundamentally, although the employer does not have a burden to prove that the claimed amount is not owed, that is in fact what the employer was able to do in this matter.

The credible testimony of the employer is found persuasive. The claim for additional wages is denied. Finally, the matter was noticed for the issue of liquidated damages. The claimant failed to appear to demonstrate that any delay in payment was due to the employer's willful misconduct. Therefore, the claim for liquidated damages under RSA 275:44 IV is also denied.

DECISION

Based on the testimony and evidence presented, and as RSA 275:43 I requires that an employer pay all wages due an employee, on time, on paydays designated in advance and as this Department finds the claimant was unable to meet her burden to prove by a preponderance of the evidence, she is owed additional wages, it is hereby ruled that this Wage Claim is invalid.


James W. McClain Jr., Esq.
Hearing Officer

Date of Decision: January 25, 2022

Original: Claimant
cc: Employer

JWM/nd