

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

█  
v.

Charter Foods North, LLC.

CASE #63674

Video-Microsoft Teams

DECISION OF THE HEARING OFFICER

**APPEARANCES:** █ – Claimant  
Kevin Kupniewski – Employer's operations manager  
Toy Epps – Employer's market coach

**NATURE OF DISPUTE:** RSA 275:43 I — Weekly, Unpaid Wages (removed)  
RSA 275:44 IV – Employees Separated from Payroll  
Before Pay Day; Liquidated Damages

**DATE OF HEARING:** February 15, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed two wage claims with the Department. The first was filed September 3, 2021, seeking owed wages and liquidated damages on wages the claimant believes were not paid within the required timeframe. The second was filed November 17, 2021, seeking wages and liquidated damages on health and dental deductions the claimant believes were willfully withheld in violation of state law.

At hearing, the claimant and employer agreed that the claimant had been paid all wages and expenses due. The claimant testified he was only seeking liquidated damages. Therefore, noticed statute RSA 275:43 I was removed from consideration by the hearing officer.

The hearing was conducted via video with Microsoft Teams because the claimant resides in Florida and the employer is in Tennessee.

**FINDINGS OF FACT**

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

The claimant formerly managed five restaurants in New Hampshire for the employer. The claimant resigned from employment July 12, 2021, giving five weeks' notice with his final day to be August 15, 2021. The claimant and employer testified that on July 13, 2021 the employer told the claimant he did not have to work the five weeks and that he would be paid five weeks' salary and unused vacation time. The claimant and employer testified that the claimant was paid five checks for the five weeks' notice and unused vacation time on five consecutive business days beginning July 20, 2021 and ending July 26, 2021.

The claimant testified that at some point he discovered that health and dental deductions in the amount of \$374.73 had been taken from the five checks and that he had not authorized the deductions because he was on his wife's health insurance. The claimant testified that when he informed the employer about the deductions, the employer sent him a check for the amount, which he received September 3, 2021. The employer testified that the deductions were inadvertent and when informed of them, the employer reimbursed the claimant.

### DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that he is owed liquidated damages. 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).

Under RSA 275:44 IV, "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller;" (emphasis added).

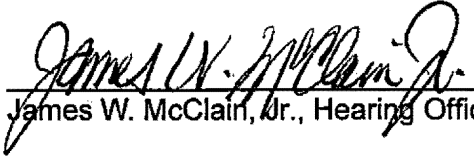
Regarding the question of liquidated damages on wages, the employer paid the claimant his wages as required by law. The facts as essentially agreed upon by the parties is that the claimant provided 5 weeks' notice and the employer then opted to give him an additional 5 weeks paid time off. In these circumstances, it would have been appropriate for the employer to make the payments for those five weeks as normal payroll checks (i.e. weekly). However, the employer essentially advanced the claimant five weeks' pay and unused vacation time and gave him a five-week vacation. Given these circumstances, the request for liquidated damages is denied. The claimant was paid timely.

Regarding the question of liquidated damages on expenses, there is no evidence that the employer willfully and without good cause withheld payment for health and dental deductions from the claimant. The evidence, to the contrary, was that the deductions were inadvertent and when the claimant did tell the employer that there was a discrepancy in pay the employer rectified the discrepancy when informed. Given these circumstances, the request for liquidated damages is denied.

**DECISION**

Based on the testimony and evidence presented, the wage claim is found to be invalid. The claimant is not entitled to liquidated damages.

March 2, 2022  
Date of Decision

  
James W. McClain, Jr., Hearing Officer

JWM/nd