

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Neuro International Healthcare, LLC.

Case No. 22-WG-00036

DECISION OF THE HEARING OFFICER

APPEARANCES: ██████████ Claimant
Attorney Mark Wiseman, for Claimant

NATURE OF DISPUTE: RSA 275:43 I – Weekly, Unpaid Wages

DATE OF HEARING: September 29, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on August 12, 2022, alleging that he was owed approximately \$14,400.00 for his wages from November 2019 to September 2022. The wage claim notice was forwarded to the employer on August 15, 2022. The employer failed to respond. The claimant requested a hearing August 31, 2022 and the hearing notice issued September 6, 2022.

The employer did not appear for the hearing. A review of the file indicated that the notice of hearing was mailed to the employer at the address provided in the original claim and was not returned to the Department as undeliverable. It was therefore determined that the employer received adequate notice of the hearing. After waiting 15 minutes for a delayed arrival or other communication from the employer, the hearing proceeded in their absence, consistent with administrative rule Lab 203.04.

FINDINGS OF FACT

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

The claimant filed a wage claim on August 12, 2022, alleging that he was owed approximately \$14,400.00 for his wages from November 2019 to September 2022. The claimant is the maintenance manager for the employer's 4 business locations. The claimant is still employed by the employer.

The wage claim and testimony were that the employment contract included a \$365.00 monthly stipend for using his own vehicle for maintenance work and snow plowing. The contract was submitted as evidence prior to the hearing. The claimant and the employer executed the contract November 20, 2019.

The contract stipulated that if the employer failed to purchase a maintenance vehicle equipped with a snow plow by February 1, 2020 the monthly stipend would increase to \$450.00 per month. The claimant testified that the employer has not purchased the maintenance vehicle equipped with a snow plow as stipulated in the contract. The claimant testified that he still uses his own vehicle to perform maintenance work for the employer.

The wage claim and testimony were that the employer made 2 monthly stipend payments of \$450.00 for a total of \$900.00. The claimant submitted a spreadsheet documenting the monthly stipend and arrearage for 35 months from December 2019 through September 2022. The total of the stipends the claimant should have received is \$15,130.00. The claimant received \$900.00 for 2 monthly stipends. The arrearage is \$14,230.00.

The employer failed to respond to the wage claim notice and failed to provide any testimony or evidence to rebut the claimant's testimony.

The claimant attempted to add the issue of liquidated damages at the hearing. That request was denied by the hearing officer as untimely.

At this point the hearing was concluded.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that he was owed unpaid wages. 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).

RSA 275:43 I provides that employers must pay all wages due to employees within 8 days of the end of the week if paid weekly and within 15 days if paid biweekly.

In this case the wage claim, evidence and testimony were that the employer executed a contract obligating the employer to pay the claimant a monthly stipend to use his own vehicle to perform maintenance work for the employer. The employer made 2 payments. The employer failed to make 33 stipend payments.

The above facts make it more likely than not that the claimant has not been paid his full wages. Therefore, it is found that the claimant was not paid his full wages in compliance with RSA 275:43 I.

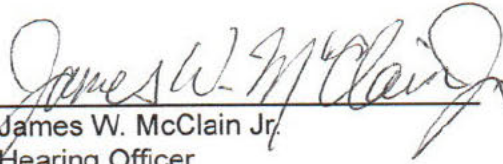
DECISION

After a review of the evidence, it is found that the claimant was not paid his full wages.

The wage claim is found to be **valid**.

The employer is directed to send a check payable to ██████████ in the amount of \$14,230.00, less applicable taxes, within 30 days of the date of this order.

October 25, 2022
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd