

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

THE HOME DEPOT

CASE NO. 22-WG-00046

DECISION OF THE HEARING OFFICER

Appearances: ██████████ the claimant appeared Pro Se.
The employer did not appear at hearing.

Nature of Dispute: RSA 275: 44 IV – Liquidated Damages

Employer: The Home Depot

Witnesses: ██████████ Claimant

Date of Hearing: October 4, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on August 18, 2022, asserting that she is due unpaid salary in the amount of \$20,000.00.

The employer was notified by the Department of Labor (DOL) via mailing dated August 19, 2022. The employer filed an objection on September 1, 2022 indicating that the claimant had been paid. In response to this, the claimant agreed she had been paid her missing wages but sought to add a request for liquidated damages under RSA 275: 44 IV as an issue for hearing. There was no objection from the employer to the new issue being added. This hearing was then scheduled accordingly for review of the claimant's claim for unpaid wages under liquidated damages under RSA 275: 44 IV for October 4, 2022 at 11:00 am. The employer did not respond to the request for hearing. The claimant appeared in person at the appropriate date and time. The employer did not send a representative. After waiting 15 minutes as required by the DOL's administrative rules the hearing proceeded in the employer's absence.

FINDINGS OF FACT

Ms. ██████████ is a 40-year-old store manager at Home Depot. As part of her compensation package, she is entitled to full pay when on short term disability.

The claimant went out on short term disability due to a post-traumatic stress disorder trigger at work on June 20, 2022. She filed a claim for her short-term disability on June 26, 2022. On July 18, 2022 she received a call from Tammy the leave of absence case manager at Home Depot who left a message informing the claimant that no claim was filed.

On July 23, 2022, the claimant sent an e-mail for clarification as she had received two letters from the insurance company each with a different case number noted. One of the letters indicated that the claim was approved, but the second requested more information. The claimant received an automated response to this e-mail on July 23, 2022. However, she had not heard back from a person as of July 28, 2022 and sent another e-mail on this date.

On August 11, 2022, the claimant was called by the Hartford Insurance Company and informed that her claim had been approved and back dated. Hartford also sent a letter via e-mail confirming this. The claimant forwarded the e-mail and attachment to the Home Depot leave of absence team the same day seeking confirmation on when she could expect her back pay. She did not receive a response to this e-mail and sent a follow-up e-mail on August 15, 2022.

On August 16, the claimant called the Home Depot leave of absence team and left a message. On August 17, 2022, Tammy called back and spoke with the claimant. Tammy apologized for not getting back to the claimant sooner. She explained that the claimant's e-mail on August 11, 2022 was sent to a supervisor for review and she would be called back that day. The claimant did not hear back from anyone for most of the day and sent another e-mail. This e-mail indicated that if she did not hear back from someone that day or receive her back pay, she would file a claim with the DOL.

On August 18, 2022, the claimant filed her claim with the DOL. Then on August 29, 2022, the claimant called the Associate Relations Manager for her territory and scheduled a phone conference on August 30, 2022. On August 30, 2022 the claimant spoke with the Associate Relations Manager and explained she had filed a wage claim with the DOL. She was called back by a different manager named Rich who apologized and admitted the company simply "dropped the ball".

On September 2, 2022, the claimant received her regular pay for that date as well as the back pay she was owed. The back pay was for pay dates July 22, 2022; August 5, 2022; and August 19, 2022. The total back pay was \$11, 267.95 in net pay.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she is owed liquidated damages. 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: 44 IV states: "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

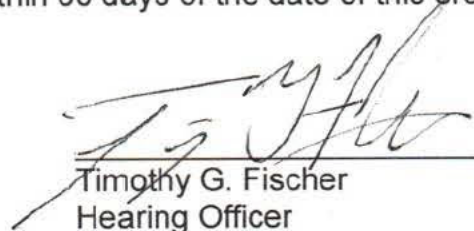
for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.”

The claimant testified credibly to the facts above. Overall, there has been a lack of response from the employer here to refute the claimant’s position that the employer did not issue payment to the claimant in a timely manner as required by law. The claimant also credibly testified that the employer via Rich, a manager in the Associate Relations Department admitted they simply “dropped the ball” and had no valid reason for withholding the wages she was owed. Finally, the employer did not appear at hearing to dispute the claimant’s contentions with evidence or testimony.

DECISION

Based on the evidence and testimony presented, the claimant has showed by a preponderance of the evidence that salary was due for the pay dates of July 22, 2022, August 5, 2022, and August 19, 2022 and she was not paid until September 2, 2022. It is found that the wage claim for liquidated damages is **valid**.

The employer is ordered to send a check in the amount of \$11, 267.95 to this Department payable to ██████████ within 30 days of the date of this order.



Timothy G. Fischer
Hearing Officer

Date of Decision: October 20, 2022

TGF/nd