

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

[REDACTED]

v.

Wireless Zone

Case No. 22-WG-00049

DECISION OF THE HEARING OFFICER

**APPEARANCES:** [REDACTED] Claimant, telephonically  
Ann Cote, for Employer, telephonically

**NATURE OF DISPUTE:** RSA 275:43 I – Unpaid Commission

**DATE OF HEARING:** September 29, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant filed a wage claim on August 19, 2022, alleging that he was owed \$2,585.15 in unpaid wages. The wage claim notice was forwarded to the employer on August 22, 2022. The employer responded August 31, 2022. The claimant requested a hearing September 2, 2022 and the hearing notice issued September 6, 2022, with the hearing scheduled for September 29, 2022.

The claimant requested a telephonic hearing on September 29, 2022, which was granted by the Department. During closing arguments the claimant expressed displeasure with the direction of the proceeding while arguing with the accuracy of the employer's evidence. The claimant subsequently disconnected from the telephonic hearing. The hearing officer concluded the hearing with the employer.

**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 19, 2022, alleging that he was owed \$2,585.15 in unpaid commissions for June 2022. The claimant was a wireless phone salesperson for the employer who received a draw against his gross profits, or monthly commissions, as a weekly wage. The claimant testified he worked for the employer for almost 2 years, resigning on July 31, 2022.

Both parties agreed the claimant's gross profits for the month of June 2022 were \$20,476.18. The claimant's draw rate in June 2022 was equivalent to a \$15.00 hourly wage. The employer's payroll records submitted into evidence indicated the claimant

worked 153.6 hours in the month of June 2022. The claimant insisted he did not work 153.6 hours that month.

The employer's work week is from Sunday to Saturday. The week that began May 29, 2022 and ended June 4, 2022 was counted as a work week in June 2022. Both parties agreed the claimant did not work that week. The claimant worked 37.03 hours in the week of June 5 to June 11, 2022 and was paid \$555.50. The claimant worked 37.57 hours in the week of June 12 to June 18, 2022 and was paid \$563.51. The claimant worked 39.47 hours in the week of June 19 to June 25, 2022 and was paid \$592.01. The claimant worked 39.53 hours in the week of June 26 to July 2, 2022 and was paid \$593.00. These payments equate to a monthly draw of \$2,304.02.

Both parties agreed the claimant made gross profits of \$20,476.18 in June 2022. Under the employer's commission structure, all chargebacks, such as customer returns or changes to the wireless billing plan and taxes on a salesperson's monthly sales are deducted from the salesperson's monthly gross profits. The claimant believed he had chargebacks and taxes of \$1,319.00. The employer presented documentation that the claimant had \$2,150.70 in chargebacks and taxes in June 2022.

The employer testified that after deducting the \$2,150.70 in chargebacks and taxes from the \$20,476.18 in gross profits, the claimant's net profits were \$18,325.48. The claimant testified his net profits were \$19,157.18 based on his calculation of chargebacks and taxes. The claimant presented no evidence to document his calculation of chargebacks and taxes.

The commission structure is 35% of the salesperson's net profits. 35% of \$18,325.48 equals \$6,413.92 in gross commissions. The salesperson's weekly draw against gross commissions is deducted from the gross commissions. After deducting the total June draw against commissions of \$2,304.02 from the claimant's gross commissions of \$6,413.92, the claimant was left with \$4,109.90 in gross commissions for June 2022. The claimant testified his gross commissions were \$6,705.15 and his draw was \$1,243.18, leaving him with gross commissions of \$5,461.73. Subtracting \$1,243.28 from \$6,705.15 equals \$5,461.87.

The employer testified that a salesperson's gross commissions are reduced by federal income tax, Social Security and Medicare in New Hampshire. The employer's documentation indicated the claimant had \$1,163.92 deducted from the \$4,109.90, leaving a net commission balance of \$2,945.98. Both parties agreed the claimant was paid \$2,876.58 in net commissions for June 2022 on August 19, 2022.

The claimant argued that he should have been paid \$5,461.73 in net commissions and was paid \$2,876.58, leaving a balance of \$2,585.15.

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 is 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 deducted the chargebacks and taxes from the claimant's gross profits, leaving the claimant with net monthly profits. The employer's commission structure is 35% of the net monthly profits, leaving the claimant with gross commissions. The claimant's weekly draw is deducted from the claimant's gross commissions. Federal income taxes, Social Security and Medicare are deducted from the remainder of the claimant's gross commissions, leaving the claimant with net commissions.

Both parties agreed the claimant was paid \$2,304.02 in weekly wages against commissions earned in the month of June 2022. However, the claimant argued that his draw was only \$1,243.28 because he had only worked 3 weeks in June 2022. The claimant argued that he would have had to have worked 153.6 hours in June 2022 for the \$2,304.02 draw to be accurate. The claimant disagreed with the payroll records. However, he was unable to provide contrary evidence to support his assertion that he did not work the 153.6 hours in June. Further, when the hearing officer pointed out that the payroll records indicated the claimant had worked 153.6 hours in June 2022, the claimant argued that the employer's time records were inaccurate. The claimant offered no evidence for that assertion and disconnected from the telephonic hearing.

The claimant's arguments appear to be based on a miscalculation of his hours worked and chargebacks in June 2022, resulting in an overestimation of gross profits and commissions and ignores the fact that federal income taxes, Social Security and Medicare are required deductions on commissions. The evidence clearly shows the claimant worked 153.6 hours in June 2022 and was paid \$2,304.02. The evidence clearly shows the claimant had \$2,150.70 in chargebacks in June 2022.

Based on these calculations, the claimant had a balance of \$2,945.98 in net commissions but was paid \$2,876.58, leaving a balance of unpaid commissions of \$69.50. No explanation was offered as to why the claimant did not receive the \$69.50.

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.

It is found the claimant is entitled to \$69.50 in unpaid commissions.

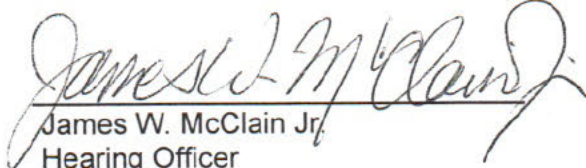
#### DECISION

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

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

The employer is directed to send a check payable to ██████████ in the amount of \$69.50 less all 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