


STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR  
CONCORD, NEW HAMPSHIRE

  
v.  
Langley Builders, L.L.C.  
CASE #22-WG-00097

DECISION OF THE HEARING OFFICER

**APPEARANCES:** Claimant, self-represented  
Employer, represented by Kurt Langley (failed to appear at hearing)

**NATURE OF DISPUTE:** RSA 275:43, I — Weekly (unpaid wages).

**DATE OF HEARING:** October 24, 2022

**BACKGROUND AND STATEMENT OF THE ISSUES**

Claimant filed a wage and hour complaint on September 10, 2022, alleging that he is owed \$500 in unpaid wages. On September 20, 2022, Kurt Langley, on Employer's behalf, filed an objection, asserting that Claimant completed some work for which he was compensated but he was never an employee of the company. He further asserted that Employer's LLC registration with the Secretary of State had been canceled as of September 20, 2022. Notice of hearing was sent to parties on September 29, 2022.

The notice of hearing was mailed to Employer at the address provided on the wage claim form, which was the same address to which the notice of claim was filed to which Employer responded. The hearing notice was not returned undelivered.

It was determined that Employer received proper notice of the hearing. The hearing proceeded in Employer's absence, pursuant to Department Administrative Rule Lab 203.04.

**FINDINGS OF FACT**

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

Claimant is [REDACTED] and lives in Belmont. He graduated from high school in 2018 and has worked in construction since then. He has worked for several employers and has been paid by the hour.

In May 2022, Claimant responded to Employer's ad on Craigslist seeking applicants for construction work with a growing company. Claimant contacted Employer via text message on May 9, 2022. He communicated with Kurt Langley, the owner of the company. A few days later, Claimant started working for Employer.

Claimant was paid weekly at \$25.00 an hour. Regular paydays were on Fridays at the end of each pay period. Mr. Langley would tell him via text messages where the job sites were and what work was to be done. Claimant was always paid in cash.

In June, Mr. Langley presented Claimant with a written contract. Claimant was instructed to sign the contract and was told that he would own a part of the company and share in the profits. Claimant did not sign the contract.

Through the summer, Claimant continued working for Employer at various job sites. He was paid weekly as agreed, except that on several occasions he was paid a few days late.

During the last pay period in August, ending on the 26th, Claimant worked 20 hours, due to rainy weather. At his hourly rate, he was supposed to be paid \$500.00. He was only paid \$350.00. The following week was also rainy, and Claimant again worked only 20 hours. He was not paid at all for this week.

The following week, Mr. Langley told Claimant via text message there was no work. Then on Thursday, September 8, he told Claimant again via text that he should find another job because Mr. Langley was going to be moving to southern New Hampshire for personal reasons.

On September 9, 2022, Claimant advised Mr. Langley by text that he might file a wage claim with the Department of Labor. On September 17, 2022, Mr. Langley texted to Claimant that he had never been an employee of the company and he would not be paid unless and until he provided documents proving the contrary.

### DISCUSSION AND CONCLUSIONS

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).

A person who is paid to perform work for an employer is presumed to be a statutory employee unless it is shown that all seven criteria for independent contractors set forth in RSA 281-A:2, VI(b)(1)(A)-(G) are satisfied. See RSA 275:42, I, II, incorporating provisions of RSA 281-A:2, VI(b)(1).

Claimant's testimony and exhibits were unrebutted. They showed that he was paid by the hour to do work for Employer. Mr. Langley told him where to go, when to go there, and what work to do there. Claimant used his own hand-tools but Employer provided the construction materials. There was no evidence that any of the seven independent-contractor criteria were met. Claimant satisfied his burden of proving that he was a statutory employee.

As a statutory employee paid on a weekly basis, Claimant was entitled to be paid his wages within eight days after the expiration of the work week. RSA 275:43, I

Claimant's testimony was unrebutted that he was still owed \$150.00 in gross wages for the week ending August 26, 2022 and \$500.00 in gross wages for the week ending September 2, 2022. The testimony was corroborated by Claimant's text message exhibits, in which Employer acknowledged on September 12, 2022 that Claimant had not been paid yet.

In light of Claimant's testimony and exhibits, the initial claim for \$500.00 is amended to include \$150.00 due for the week ending August 26, 2022.

To the extent Mr. Langley in his objection intended to assert the dissolution of Employer as an limited liability corporation as a defense to liability, such a claim is unavailing pursuant to RSA 275:42, V:

For the purposes of this subdivision the officers of a corporation and any agents having the management of such corporation who knowingly permit the corporation to violate the provisions of RSA 275:43, 44 shall be deemed to be the employers of the employees of the corporation.

The evidence showed that Mr. Langley had the management of the corporation and knowingly permitted it to violate the provisions of RSA 275:43. Accordingly, he is deemed the employer in the present context, and the wage claim is enforceable against him as well as against the dissolved corporation.

### DECISION

For reasons stated above, Claimant's claim for unpaid wages is found **valid** to the extent of \$650.00.

Kurt Langley and/or Langley Builders, L.L.C. are hereby ordered to send a check to the Labor Department, payable to Jonnathan Custodio-Hernandez, in the amount of \$650.00, within 30 days of the date of this Order.

October 26, 2022  
Date of Decision

  
George A. Stewart, Hearing Officer

GAS/nd