

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

PROFESSIONAL HAIR DRESSER

CASE NO. 22-WG-00117

DECISION OF THE HEARING OFFICER

Appearances: ██████████ the claimant appeared Pro Se.

Marsha Hardy appeared via phone on behalf of the employer.

Nature of Dispute: RSA 275:57- Reimbursement of Employee Expenses

Witnesses: ██████████ the claimant
Marsha Hardy, the widow of Michael Reuter former owner of
Professional Hair Dresser

Employer: Professional Hair Dresser

Date of Hearing: April 5, 2023

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on September 19, 2022. The claim asserted that she is owed \$463.65 in reimbursement of expenses. The employer did not respond within the allowed ten-day period. The claimant requested a hearing on October 7, 2022. A hearing was originally scheduled for November 8, 2022 at 11:00 am. This hearing went forward with a decision rendered by Hearing Officer George Stewart. However, on December 27, 2022, the DOL received the hearing notice sent to the employer back as undeliverable mail. On January 6, 2023, Hearings Administrator Fuller issued a letter noting that the previous decision would be vacated due to the employer not receiving proper notice of the hearing. The claimant was able to obtain an updated address and the claims process began again. A new notice of the claim was mailed to the employer's correct address on January 31, 2023. The employer again did not respond to the claim and the claimant again requested a hearing on March 6, 2023. The hearing was then scheduled for April 5, 2023 at 10:30 am. The hearing was held at the DOL offices in Concord, New Hampshire. The claimant appeared in person at the appropriate date and time. The employer's representative called shortly before the hearing was scheduled to begin and advised she had a flat tire and would not be able to appear on time. The claimant agreed to allow the employer's representative to participate via telephone. The hearing then went forward as planned.

FINDINGS OF FACT

██████████ (Ms. ██████████) is a 50-year-old female who was employed by Professional Hair Dresser (PHD) through August of 2022. She was employed as an outside sales consultant and educator. The company sells hair care products to salons. PHD was owned by Michael Reuter (Mr. Reuter) until his death on or about August 15, 2022.

Testimony of ██████████

The claimant testified she was paid a salary, and a car allowance weekly, plus commissions once a month. The claimant testified that she understood the car allowance was to cover maintenance, gas, and mileage because she used her own vehicle. The claimant testified that she did not have a written agreement with the employer.

The claimant testified that following Mr. Reuter's death she worked for about three weeks without pay before resigning. The claimant further testified that she was eventually paid the salary and commission she was owed.

The claimant submitted copies of checks from the business signed by Mr. Reuter dated May 1, 2022, July 17, 2022 and July 24, 2022 which all say "Car Allowance" in the memo. The claimant testified that she also presented these check copies to the employer to prove she was still owed money to no avail. The claimant testified that she repeatedly asked for her car allowance beginning in August of 2022 but kept getting different excuses from Mr. Reuter's widow and daughter.

The claimant further testified that she had been told by former clients that stock was being sold off by Mr. Reuter's widow and daughter at heavily discounted prices during the last few months of 2022. The claimant testified that despite this she was refused pay for her car allowance for her final three weeks.

The claimant testified that she had miscalculated her mileage and was owed for 832 miles not 843. The claimant testified her calculations were based on a rate of 55 cents per mile. This would reduce her total claim from \$463.65 to \$457.60. Ms. ██████████ has not been paid her car allowance to date.

Testimony of Marsha Hardy:

Marsha Hardy (Ms. Hardy) is Mr. Reuter's widow, they also have a daughter, Danielle. Ms. Hardy testified she was never employed by PHD. Ms. Hardy further testified that she has a probate lawyer working on the personal estate, but Mr. Reuter kept his business completely separate from their personal affairs. Ms. Hardy testified that as a result of this separation, neither she nor her daughter can legally sign checks on behalf of the company.

Ms. Hardy testified that following Mr. Reuter's death she re-hired a former employee who was still listed as an authorized signatory on the company bank accounts. Ms. Hardy further testified that this employee allegedly embezzled \$80,000

from the company and disappeared. Ms. Hardy testified that she tried to report the embezzlement to the Manchester Police but was told that this was "not a police matter" and she had to call the Attorney General's office. She further testified that when she called the Attorney General's office, she was told it was not a civil matter, but in fact a criminal one. Ms. Hardy further testified that she did file a complaint of fraud with Santander Bank. On cross-examination, Ms. Hardy stated she could not provide any report numbers for the Manchester Police, Santander Bank, or the New Hampshire Attorney General's office.

Ms. Hardy testified that following Mr. Reuter's death she went through all the paperwork and could not find any written agreements concerning vehicle reimbursements.

Ms. Hardy denied selling off the remaining inventory at discounted prices. She testified that instead the manufacturers reclaimed some of it, some was thrown away, and the landlord for the warehouse kept some as payment for rent owed.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he is owed unpaid wages, and commissions as well as expenses. 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.

The claimant argued that she was owed reimbursement for vehicle related expenses over three weeks. The claimant further argued that the submitted checks with "Car Allowance" show that she was owed this payment even absent a written agreement. The claimant further argued that Ms. Hardy and her daughter have simply refused to pay despite the ability to do so. The claimant finally argued that she had made reasonable attempts to resolve this issue with her employer without success.

The employer argued that there was no written agreement which entitled the claimant to any payments for vehicle expenses. The employer also argued that they have no assets due to alleged embezzlement by a former employee. The employer further argued that the claimant had been paid \$200 in cash by Mr. Reuter's daughter and this should be considered a partial payment if the case is decided in the claimant's favor.

The claimant's argument that the submitted checks with "Car Allowance" show that she was owed this payment even absent a written agreement is persuasive. The submitted checks show that, prior to his untimely passing, Mr. Reuter was paying the claimant for her mileage and other automotive expenses related to the use of her personal vehicle to travel for work. Given that Mr. Reuter personally signed these checks it would be unreasonable to conclude he had not agreed to the payments.

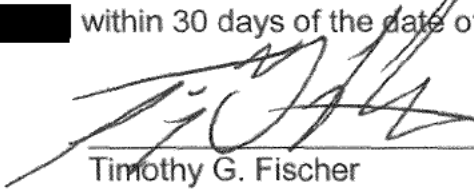
The employer's argument that that they have no assets due to alleged embezzlement by a former employee is not persuasive. While Ms. Hardy testified to an alleged embezzlement by a former employee there is an overall lack of evidence that

anything has been done about this. Ms. Hardy could provide no information such as a police report number or the like to show that she had alerted the proper authorities to the theft. Furthermore, her testimony on the matter that she was told embezzlement was "not a police matter" when she tried to report it is simply not believable.

DECISION

Based on the evidence and testimony presented, the claimant has shown by a preponderance of the evidence that she was owed reimbursement of expenses. The claimant's request for payment of reimbursement of business expenses is therefore **valid**.

The employer is ordered to send a check in the amount of \$457.60 to this Department payable to ██████████ within 30 days of the date of this order.



Timothy G. Fischer
Hearing Officer

Date of Decision: April 28, 2023

TGF/nd