

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.
HMSHOST

CASE NO. 22-WG-00050

DECISION OF THE HEARING OFFICER

Appearances: ██████████ the claimant did not appear for the hearing
Marshall Crane appeared on behalf of the employer.

Nature of Dispute: RSA 275:43 V – Weekly, Unpaid Paid Time Off (PTO)

Employer: HMSHOST

Date of Hearing: October 3, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on August 19, 2022, asserting that he is due unpaid wages in the amount of \$152.00. These wages were reportedly owed based on unused paid time off.

The employer was notified by the Department of Labor (DOL) via mailing dated August 22, 2022. The employer objected and sent documentation to the DOL on August 26, 2022. In response to the objection, the claimant requested a hearing. This hearing was then scheduled accordingly for review of the claimant's claim for unpaid wages under RSA 275:43 V for October 3, 2022 at 11:00 am. Mr. Crane appeared in person on behalf of the employer at the appropriate date and time. The claimant did not appear for the hearing. After waiting 15 minutes as required by the DOL's administrative rules the hearing proceeded in the claimant's absence.

FINDINGS OF FACT

Mr. ██████████ is a ██████████ who began work at HMSHOST on June 7, 2022. His final day of work was July 21, 2022, and he was terminated as of August 1, 2022. He was paid \$750.03 net via direct deposit on August 4, 2022 for the 41.83 hours worked between July 15, 2022 and July 28, 2022 at his hourly rate of \$17.00. See *submitted paystub*.

HMSHOST submitted a portion of their employee handbook which explained their time off policy. Their objection indicated that Mr. ██████████ would only receive time

off under the employer's "Field Flex Time Program". This is described in the handbook as being: "for the purposes of providing paid time off for any personal reason." See *page 1*. This time is accrued over the course of each year of employment except for the first year. During the first year of employment the company allows an accelerated accrual of five months. The maximum accrual allowed is 48 hours per year. See *page 2*. The claimant had accrued 9.78 hours of Field Flex Time as of his final paycheck. See *submitted paystub*.

To be eligible for paid vacation time, employees must complete at least six months of employment. The claimant in this case was employed for approximately six weeks. See *page 4*.

The handbook further states that payout of any accrued time off upon separation from HMSHOST is governed by the laws of the state the employee works in. The handbook lists several states whose laws impact an employee's payout in the event of termination or roll over policies. New Hampshire is not included in this list.

DISCUSSION AND CONCLUSIONS

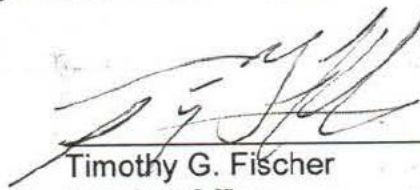
The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he is owed unpaid wages. Proof by a preponderance of evidence as defined in Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The claimant did not appear at the hearing and as such cannot meet his burden due to a lack of evidence presented. However, even if the claimant appeared, he could not meet his burden as there is no requirement in New Hampshire Law that personal or sick leave be paid out upon separation of employment.

DECISION

Based on the evidence and testimony presented, the claimant has not met his burden and his request for \$152.00 in unpaid PTO is respectfully denied.

The wage claim is ruled **invalid**



Timothy G. Fischer
Hearing Officer

Date of Decision: October 18, 2022

TGF/nd