

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]
v.

National Healthcare Corporation

Case No. 23-WG-00400

DECISION OF THE HEARING OFFICER

APPEARANCES: [REDACTED] claimant
Allison Burwin, for employer

NATURE OF DISPUTE: RSA 275:43 I — Weekly, Unpaid Bonus

DATE OF HEARING: March 28, 2023

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on January 31, 2023, alleging that she was owed unpaid bonuses in the amount of \$2,230.00. Notice of the claim was sent to the employer on February 7, 2023. The employer responded February 10, 2023. The claimant requested the hearing February 21, 2023. The hearing notice was issued February 27, 2023.

The claimant submitted documentation of her schedule and work attendance at the hearing. The employer did not object to the submission of the evidence, which was then accepted by the hearing officer.

FINDINGS OF FACT

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

The claimant is a 42-year-old woman who resided in Manchester, New Hampshire at the time of filing. The employer is a skilled nursing facility in Manchester, New Hampshire. The claimant's wage claim and testimony were that she began full time employment with the employer as a licensed nursing assistant on September 11, 2012 and is still employed there.

Both parties agreed that the employer has a bonus policy of paying bonus in addition to wages in June, July and August 2022. Employees were entitled to a \$100.00 bonus for working additional shifts from Monday to Thursday and a \$110.00 bonus for additional shifts on Fridays. The pay period was a two week period from Monday to Sunday. Both parties agreed the policy was clear that if an employee called in sick for any shift during the pay period all bonuses earned during the period were forfeited. The

employer testified that the bonus policy was an attendance incentive. Both parties testified the bonus policy ended August 31, 2022 when a new owner acquired the facility.

The claimant testified that she went from full time status to per diem status on or around June 1, 2022. Full time employees were only eligible for the bonuses after working 37.5 hours. Per diem employees were eligible for bonuses after working their required shifts, which were one weekend per month. The claimant testified that as a result of the change she was no longer paying for health care insurance and was only required to work one weekend per month, which allowed her to pick up more bonus shifts.

The claimant testified that the director of nursing effected the change from full time to per diem and notified the scheduler. The claimant testified the scheduler initially told her she was eligible for the bonuses, then told her she was not eligible because the claimant submitted her desired monthly schedule in advance. The claimant testified a new scheduler informed her in December 2022 that she was eligible for the bonuses. Therefore she filed her wage claim.

The claimant submitted documentation of her attendance during June, July and August 2022. The claimant testified the documentation was a true and accurate record. The employer testified she did not have any documentation of the claimant's attendance and did not object to the admission of the documentation after she reviewed it. The claimant seeks a total of \$2,230.00 in unpaid bonuses.

The claimant's documentation indicated that the claimant called in sick on some occasions. The claimant's two week periods were as follows: May 30 – June 12, 2022, June 13 –26, 2022, June 27 – July 10, 2022, July 11 – July 24, 2022, July 25 – August 7, 2022, August 8 – 21, 2022 and August 22 – 31, 2022. The claimant called in sick twice during the June 27 – July 10, 2022 pay period, once during the July 11 – July 24, 2022 pay period and three times during the July 25 – August 7, 2022 pay period.

The employer testified that there was no record of the claimant's transition from full time to per diem. However the employer acknowledged that the claimant is a per diem employee and worked in June, July and August 2022. The employer provided documentation of the claimant's schedule from June 27, 2022 to September 4, 2022. The documentation showed that the claimant was scheduled to work one weekend per month among other shifts. The employer reiterated that they did not have documentation of the claimant's attendance.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proving by a preponderance of the evidence that she 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, in pertinent part,

"Every employer shall pay all wages due to employees within 8 days after the expiration of the work week if the employee is paid on a weekly basis, or within 15 days after the expiration of the work week if the employee is paid on a biweekly basis"

Under RSA 275:43 V,

"Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due".

The employer argued that the claimant was not entitled to any bonuses because there was no record that the claimant was a per diem employee. This argument is not persuasive because the bonus policy provided by the employer as evidence clearly applied to full time and per diem employees and the employer acknowledged in testimony that the claimant was a per diem employee. The claimant was and remains an employee. Therefore, she was eligible for bonuses under the plan. It is found that the claimant's employment status did change to per diem on June 1, 2022.

In this matter the claimant provided her attendance records, which were not challenged by the employer. The claimant credibly testified that she was owed some bonuses and was not entitled to others per the policy because she called in sick as shown on her attendance records. The claimant's documentation indicates that the claimant is entitled to \$1,130.00 in bonus pay from May 30, 2022 to June 26, 2022 and \$1,320.00 in bonus pay from August 8, 2022 to August 31, 2022. The claimant is not entitled to bonuses for the three pay periods from June 27 to August 7, 2022 because she called sick at least once during each of the three pay periods.

Therefore it is found more likely than not by a preponderance of the evidence that the claimant is owed \$2,450.00 in unpaid bonuses.

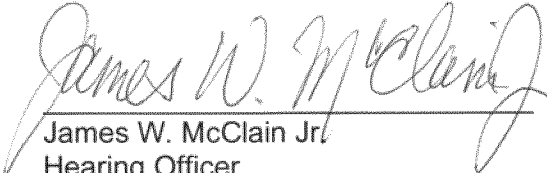
DECISION

Based on the testimony and evidence presented, this Department finds the claimant has met her burden to prove by a preponderance of evidence that she is owed additional wages.

It is hereby ruled that this Wage Claim is **valid**.

The employer is directed to send a check in the name of ██████████ in the amount of \$2,450.00 less any applicable taxes to the New Hampshire Department of Labor within 30 days of the date of this order.

April 25, 2023
Date of Decision


James W. McClain Jr.
Hearing Officer

JWM/nd