

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



v.

**YourWay Construction, LLC.**

**Case No. 23-WG-00443**

**DECISION OF THE HEARING OFFICER**

**Appearances:**



claimant, telephonically



claimant's spouse/interpreter

John H. Perkins, respondent

**Nature of Dispute:** RSA 275:42 I/II – Employer/Employee Relationship  
RSA 275:43 I – Weekly, Unpaid Wages

**Date of Hearing:** March 30, 2023

**BACKGROUND AND STATEMENT OF THE ISSUES**

The current issue concerns the respondent's alleged failure to pay the claimant all the wages due to him. Specifically, the claimant asserts that he is owed \$1,580.00 in wages for work performed on February 3-12, 2023.

The claimant filed a wage claim with the Department on February 16, 2023. A Notice of Wage Claim was forwarded to the employer on February 17, 2023. The respondent responded February 22, 2023, citing no employer/employee relationship. The hearing was requested February 23, 2023. The hearing notice was dated February 27, 2023.

**FINDINGS OF FACT**

The claimant's wage claim and testimony were that the claimant had a verbal contract with the respondent's son to install sheetrock at the respondent's home for \$3,500.00 and that the respondent's son had paid the claimant \$1,920.00 in advance. The wage claim and testimony were that the respondent's son told the claimant his services were no longer required after a few days and that the claimant never completed the work. The wage claim and testimony were that the claimant had paid others to perform the work and therefore the claimant sought compensation of \$1,580.00 for those expenses.

The respondent testified he had never met the claimant and never employed the claimant in any capacity and that he was aware his son had made the agreement with the claimant and his son told him he had paid the claimant \$2,000.00 in advance. The

respondent testified his son told the claimant his services were no longer required after viewing the poor quality of the work performed. The respondent testified he believed the claimant named YourWay Construction, LLC. in this case because he had a sign in front of his house advertising the business.

### DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in these matters to show by a preponderance of the evidence that he is owed additional 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.

RSA 275:42 II defines "employee" as "every person who may be permitted, required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment".

In this case both parties agree the claimant installed sheetrock at the respondent's home on a verbal contract basis for the respondent's son in February 2023. Both parties agreed the respondent's son paid the claimant and discontinued the claimant's services. The claimant offered no evidence or testimony that he was an employee of the respondent or had even met the respondent. The respondent testified he had never met the claimant and had never employed him.

After reviewing the testimony and evidence, the claimant's wage claim is found to be unpersuasive. The claimant failed to submit any evidence that the respondent hired him as an employee in February 2023. There is no evidence the respondent contracted with the claimant in February 2023. There is no evidence the claimant was directed, permitted or required by the respondent to perform any work.

Therefore, it is found more likely than not by a preponderance of the evidence that the claimant was at no time an employee of the respondent.

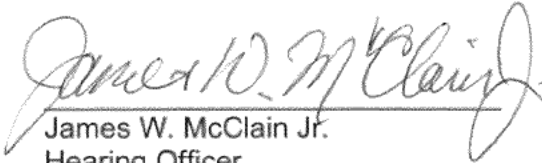
There is no finding on RSA 275:43 I because it is found that the claimant was not an employee of the respondent.

### DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, this Department finds the claimant has failed to meet his burden to prove by a preponderance of evidence that he is owed additional wages.

It is hereby ruled that the Wage Claim is **invalid**.

April 25, 2023  
Date of Decision

  
James W. McClain Jr.  
Hearing Officer