

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOL 05002

MERIWEATHER HOME NURSING, FRAN MERIWEATHER PETITIONER, v. NC DOL RESPONDENT.	FINAL DECISION
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This contested case came on for hearing before the Honorable J. Randall May, Administrative Law Judge, on July 13, 2016, in the Martin Courtroom of the High Point Courthouse, 505 E. Green Street, High Point, North Carolina.

APPEARANCES

Appearing on behalf of the Petitioner:

Fran Meriweather, *pro se*
5399 Doggett Road
Browns Summitt, NC 27214

Appearing on behalf of the Respondent:

North Carolina Department of Justice, by
Melissa H. Taylor
Assistant Attorney General
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUE

Whether Respondent properly assessed Petitioner a Civil Money Penalty?

BASED UPON a preponderance of the admissible evidence the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner has been in business for 19 years as a home nursing company. Petitioner currently has two to three employees and has had 90 to 95 employees at times.
2. Respondent is an agency and department of the State of North Carolina.
3. Respondent is the State agency in North Carolina responsible for enforcing the rules and regulations that govern wage payments and employment records for employers in North Carolina.
4. N.C. Gen. Stat. § 95-25.15(b) provides: “every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the employer, including the ages of employees, and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, ...”
5. 13 NCAC 12.0801 provides:
 - (a) Every employer shall maintain complete and accurate records which contain the following information for each employee in each workweek, unless the employee is specifically exempted:
 - (1) Name in full;
 - (2) Home address, including zip code and phone number;
 - (3) Date of birth if under 20;
 - (4) Occupation in which employed or job title;
 - (5) Time of day and day of week the employee's workweek begins (a group of employees working the same workweek may have one record keeping for the entire group);
 - (6) Regular rate of pay;
 - (7) Hours worked each workday;
 - (8) Total hours worked each workweek;
 - (9) Total straight-time earnings each workweek;
 - (10) Total overtime earnings each workweek;
 - (11) Total additions to or deductions from wages;
 - (12) Total gross wages paid each pay period;
 - (13) Date of each payment
 - (b) All other records required by statute or rule for the enforcement of any provision of the Wage and Hour Act must also be maintained by the employer. Such records include, but are not limited to, the following: tip credits; costs of meals, lodging or other facilities; start and end time for youth under age 18; youth employment certificates; wage deductions; vacation and sick leave policies; policies and procedures relating to promised wages; and records required to compute wages as defined by G.S. 95-25.2(16).

6. N.C. Gen. Stat. § 95-25.23A(a) provides: “Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per employee with the maximum not to exceed two thousand dollars (\$2,000.00) per investigation by the Commissioner or the Commissioner’s authorized representative.”
7. On February 6, 2015, Respondent contacted Petitioner via telephone regarding a complaint from an employee of Meriweather Home Nursing (Cynthia Jacobs) about not being paid her wages.
8. On February 6, 2015, Respondent made a request of Petitioner to provide time and corresponding payroll records for Cynthia Jacobs for the dates of June 1, 2014 through March 1, 2015. Respondent also requested copies of company written policies.
9. After not receiving the requested records, Respondent, on April 20, 2015, made another request of Petitioner to provide time and corresponding payroll records of Cynthia Jacobs and copies of company written policies
10. The April 20, 2015, request was made via email and was admitted as Exhibit R-1.
11. The email address Respondent sent the request to was meriweatherhomenursing@yahoo.com.
12. Respondent had previously used this email to communicate with Petitioner.
13. Respondent did not receive any indication that the email was undelivered or undeliverable to Petitioner.
14. On April 24, 2015, Respondent sent Petitioner an email notifying her of the conclusion of the investigation. The email was admitted as Exhibit R2a-R2f.
15. Respondent did not receive any indication that the email was undelivered or undeliverable to Petitioner.
16. The April 24, 2015, email to Petitioner included the Citation Report (Exhibit R-2c) which indicated Petitioner was cited for failing to provide “accurate records of employee wages, hours, or other conditions and practices of employment required by the North Carolina Wage and Hour Act.”
17. Petitioner did not produce or provide to Respondent the requested records.
18. On April 27, 2015, Respondent sent Petitioner a Notice of Penalty. The Notice of Penalty was admitted as Exhibit R-3.

19. The Notice of Penalty stated that Respondent's investigation revealed Petitioner had violated the record-keeping provisions of the North Carolina Wage and Hour Act and assessed a civil money penalty of \$250.00.
20. On or about July 3, 2015, Petitioner filed a Petition for Contested Case Hearing with the Office of Administrative Hearings appealing the Notice of Penalty.

BASED UPON the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the subject matter and the parties herein pursuant to Article 3 of Chapter 150B and Chapter 95-25 of the North Carolina General Statutes.
2. Petitioner employed Cynthia Jacobs at Meriweather Home Nursing.
3. Petitioner is required by N.C. Gen. Stat. § 95-25-15(b) to make and keep time and payroll records of its employees.
4. Respondent requested Petitioner to produce payroll and time records for Cynthia Jacobs on multiple occasions.
5. Petitioner did not produce those requested records.
6. Petitioner did not make and keep time and payroll records for Cynthia Jacobs.
7. Such action on the part of Petitioner violated N.C. Gen. Stat. § 95-25-15(b) and 13 NCAC 12.0801.
8. Pursuant to N.C. Gen. Stat. § 95-25.23A Respondent can issue a civil money penalty to an employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b).
9. Respondent issued Petitioner a Notice of Civil Penalty on April 27, 2015, assessing Petitioner a penalty of \$250.00 for violations of the record-keeping provisions of the North Carolina Wage and Hour Act.
10. On or about July 3, 2015, Petitioner filed a Notice of Contested Case to challenge the assessed penalty.
11. Respondent calculated the penalty in accordance with § 95-25.23A and properly issued Petitioner a civil money penalty in the amount of \$250.00.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned determines, and hereby orders, that Respondent's determination that Petitioner violated N.C. Gen. Stat. § 95-25-15(b) and 13 NCAC 12.0801, and the Respondent's assessment of a \$250.00 penalty against Petitioner, are UPHELD.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 10th day of August, 2016.

J Randall May
Administrative Law Judge