

The employer, a community education center, was founded by an order of Catholic nuns. However, the employer's leadership was not affiliated with the order and its bylaws precluded the order from exercising any supervisory authority over the center's operations. Additionally, the employer had received the vast majority of its funding from government grants for the past six years. As the employer was not controlled or funded by a religious organization, the claimant's services to the employer were not exempt from coverage under G.L. c. 151A,

**Board of Review
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Issue ID: 0031 2640 76

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer and filed a claim for unemployment benefits with the DUA, effective May 26, 2019. Her claim was denied in a determination issued on June 7, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 12, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant's services for the employer were not considered employment within the meaning of G.L. c. 151A, § 6(r), and, thus, the claimant did not have sufficient base period wages to be eligible for benefits under G.L. c. 151A, § 24(a). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional findings relevant to the employer's organization. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's services for the employer were not considered employment because her employer was operated primarily for religious purposes and principally supported by an association of churches, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant began working for this employer's educational center in August of 2009 working full-time hours as a non-union Program Manager receiving bi-weekly checks based on a yearly salary of approximately \$68,000.
2. The employer's Articles of Organization were not offered and are not in exhibit.
3. The school's current Mission Statement is: "To provide quality education and support services in a diverse and caring community that empowers adult learners to realize their full potential." The employer's current Mission Statement does not make reference to the organization operating for educational and religious purposes.
4. The school was established, and property provided, under the care of an order of Catholic nuns, the [Name A], but is no longer under the care of this religious order.
5. The Archdiocese of [City A] declined to provide the [Name A] with financial assistance when founding the organization.
6. When the employer facility began receiving state funding in 2015, it ceased teaching religion, engaging in religious practices in the facility, and removed religious paraphernalia from the employer's facility.
7. The employer's total revenue for 2015 was \$1,445,646. The amount from government contributions in 2015 was \$833,671, from investment income \$367,351, and from individual contributions \$214,950.
8. The employer's total revenue for 2016 was \$1,168,857. The amount from government contributions in 2016 was \$918,339, from investment income \$21,451, and from individual contributions \$253,934.
9. As of 2015, the employer began removing members of the [Name A] from staff and the Board of Directors.
10. There are 14 members on the Board of Directors, 2 members are Sisters of [Name A] and 12 members are not affiliated with the [Name A].
11. The Board of Directors owns and controls the employer's operations.
12. The Executive Director of the employer organization is not affiliated with the [Name A].
13. The employer's current bylaws do not allow the [Name A] any authority over the operation of the employer's organization.
14. On or about 06/03/19, the school closed for reorganization with a goal to reopen again in approximately two years.

15. On 05/26/19, the claimant filed a claim for unemployment benefits effective 05/26/19.
16. On 05/27/19, the claimant was sent a Monetary Determination informing her that she allegedly had no wages to establish a Massachusetts unemployment claim because the money paid to her from this school was exempt under the unemployment law because of the school's association with the Catholic Church.
17. The DUA Status Department (Employer Liability) on 10/10/19 ruled that earnings from this school are exempt and are not considered to be wages that may be used in determining eligibility for benefits because of the school's relationship with the Catholic Church.
18. The claimant appealed these determinations.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant's services for the instant employer were exempt from coverage.

In analyzing the claimant's eligibility for benefits, we first look to G.L. c. 151A, § 24, which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall—

- (a) Have been paid wages in the base period amounting to at least thirty times the weekly benefit rate; provided, however, that for the period beginning on January first, nineteen hundred and ninety-five the individual has been paid wages of at least two thousand dollars during said base period; provided, further, that said amount shall be increased annually proportionately, rounding to the nearest one hundred dollars, to any increases which have occurred during the prior calendar year in the minimum wage

Also relevant to this case is G.L. c. 151A, § 6, which provides in pertinent part, as follows:

The term "employment" shall not include:

- (r) Service performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and

which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

The review examiner determined the claimant's services for the employer were not considered employment because he concluded the employer was operated primarily for religious purposes and was funded primarily by religious organizations. We agree that, under these specific circumstances, it was reasonable for the review examiner to conclude that the employer's community education center was established and initially operated for religious purposes. *See Kendall v. Dir. of Division of Employment Security*, 393 Mass. 731, 734–35 (1985) (an organization providing educational services to handicapped children on a nondenominational basis was operated for religious purposes because its operations furthered the founders' religious objectives). However, there is insufficient evidence in the record to sustain the conclusion that the employer's educational center is presently operated, supervised, controlled, or otherwise principally funded by a church or association of churches.

While the employer's educational center was founded by an order of Catholic nuns, its bylaws do not allow the order to have any control over the employer's operations. Consolidated Findings ## 4 and 13. The employer's Executive Director is not affiliated with the order, and the employer's leadership has been taking steps to eliminate any influence the order had over the employer's operations. *See Consolidated Findings ## 9-11*. Therefore, there is no indication from the record that the employer's education center is currently operated, supervised, or controlled by a church or association of churches.

Further, while the order used its own assets to establish the employer's educational center, there is no indication from the record the employer continued to receive ongoing operational funding from a church or association of churches. *See Consolidated Findings ## 4 and 5*. The employer's financial reports show that in excess of 80% of its operational funding has come from government grants and investment income since it began accepting government funding in 2015. *See Consolidated Findings ## 6–8*. As such, there is insufficient evidence in the record to support the conclusion that the employer was principally supported by a church or association of churches.

We, therefore, conclude as a matter of law that the services performed by the claimant were not exempt under G.L. c. 151A, § 6(r), and, consequently, her earnings from the employer constituted qualifying wages under G.L. c. 151A, §§ 1(s)(A) and 24(a).

The review examiner's decision is reversed. The claimant was an employee, pursuant to the provisions of Chapter 151A. The claimant is monetarily eligible for benefits in connection with her 2019 unemployment claim and the wages paid to the claimant shall be used to calculate the claimant's benefit rate and benefit credit.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 22, 2021



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

LSW/rh