As the claimant's employer, a Limited Liability Company, elected to be treated as an S-corporation for federal tax purposes, his base period wages could be used to establish monetary eligibility for benefits, even though he is the sole owner of the LLC.

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Issue ID: 0081 2038 21

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 filed a claim for unemployment benefits with the DUA effective October 1, 2023, which was denied in a determination issued on October 21, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 1, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had insufficient base period wages upon which to establish a claim for benefits and, thus, he was disqualified under G.L. c. 151A, §§ 1(h) and 24(a). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's wages could not be used to establish an unemployment claim because his employer LLC operates as a sole proprietorship, 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 present employing unit is an ice cream/hamburger restaurant which is operated by a Limited Liability Company (LLC) S-Corporation. The claimant is the sole owner of this LLC.

2. The claimant has owned and worked in the restaurant as a manager for approximately 21 years.

3. On its 2022 tax returns, the [LLC] reported its gains and losses using a schedule K-1.

4. The claimant's only employment between October 1, 2022, and September 30, 2023, was with the present employing unit.

5. The restaurant only operates from around April to October, closing when the weather turns cold.

6. In 2023, the claimant started working in the restaurant on May 1, 2023, and laid himself off on September 15, 2023.

7. On October 1, 2023, the claimant filed his 2023-01 claim for unemployment benefits effective the same day.

8. The claimant expects to reopen the restaurant and return to work around April 2024.

9. On October 21, 2023, DUA issued Notice of Disqualification 0081 2038 21-01, stating that, under Massachusetts General Laws, Chapter 151A, Section 6(d), the wages the claimant base period wages were exempt [sic].

10. Without the wages from the present employer, the claimant was determined to be monetarily ineligible for an unemployment claim as of October 1, 2023.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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 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 base period earnings from the instant employer may not be treated as qualifying wages.

In order to be eligible for unemployment benefits, the claimant must have earned wages amounting to at least thirty times his weekly benefit rate and at least $6,000.00 in his base period. G.L. c. 151A, § 24(a).[1] Wages are defined under G.L. c. 151A, § 1(s), which provides, in relevant part, as follows:

> (A) "Wages", every form of remuneration of an employee subject to this chapter for employment by an employer . . . .

[1] G.L. c. 151A, § 24(a), states that a claimant must have earned $2,000.00 in the base period. However, this amount changes periodically, as required under the statute, based on changes to the minimum wage. The minimum amount of wages needed for a valid unemployment claim at the time the claimant filed his 2023 claim was $6,000.00.

The employer in this case is an LLC registered in Massachusetts[2], and the claimant is the sole owner. Finding of Fact # 1. Where a claimant is the sole owner of his employer, we must look at the employer's federal tax classification to determine whether the claimant's base period wages constitute qualifying wages. As the Massachusetts Appeals Court has explained:

> Corporations, unlike partnerships, are treated as separate legal entities for the purposes of the unemployment compensation statute. Spaneas v. Travelers Indem. Co., 423 Mass. 352, 354 (1996) ("A corporation is an independent legal entity, separate and distinct from its shareholders, officers, and employees.") Therefore, a corporate shareholder may be an employee and qualify for unemployment benefits provided other conditions are met.

Herder v. Dir. of Division of Unemployment Assistance, 82 Mass. App. Ct. 701, 704 (2012) (further citations omitted).

If the employer were classified as a sole proprietorship for federal tax purposes, the claimant's earnings would not qualify as wages for the purposes of establishing monetary eligibility for benefits under G.L. c. 151A, §§ 1(s)(A) and 24(a). However, if the employer elected to be classified as a corporation for federal tax purposes, it is considered a legally distinct entity from its shareholders and officers, and, therefore, any remuneration paid to a shareholder or officer may qualify as wages paid to an employee of the corporation.

The review examiner concluded the claimant's base period wages from the instant employer could not be used to establish a claim for benefits, because the employer reported its gains and losses using a Schedule K-1 form. *See* Finding of Fact # 3. However, multiple entities, including sole proprietorships, partnerships, and S-corporations use different Schedule K-1 forms to file their federal income tax returns. For the purposes of this case, business entities that have elected to be classified as an S-corporation for federal tax purposes will file their federal income tax returns on a Schedule K-1, Form 1120-S.

The employer completed and filed 2022 federal income tax returns, admitted into evidence as Exhibit 10, which show the employer reported its income on a Schedule K-1, Form 1120-S.[3] Accordingly, the evidence submitted by the claimant confirms the review examiner's finding that the employer had elected to be treated as an S-corporation for federal tax purposes. Finding of Fact # 1.

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[2] Because the unemployment benefits at issue are subject to the Federal Unemployment Tax Act, 26 U.S.C. § 3301, *et seq.*, we are bound by U.S. Department of the Treasury regulations. An employer's tax classification is dictated by federal tax law, not an employer's classification under state law. 26 C.F.R. § 301.7701-1(a)(1). The employer's LLC status is a state-law designation, and it is not material for purposes of our analysis. *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) No. 26-08 (Sept. 8, 2008), p. 1. "When the states created LLCs, the IRS did not create a new tax classification, but instead applied the three tax entity classifications it had always used for business taxpayers: corporation, partnership, or sole proprietor. . . ." Id. at p. 1–2.

[3] Exhibit 10 is part of the unchallenged evidence introduced at the hearing and placed into the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

A review of the DUA's electronic recordkeeping system indicates that the claimant was paid $43,700 during his base period. Therefore, inasmuch as the claimant earned in excess of $6,000 during his base period, he is monetarily eligible for benefits under his 2023-01 claim.

We, therefore, conclude as a matter of law that, during the base period of this claim, the claimant's base period wages from this employer constituted qualifying wages under G.L. c. 151A, §§ 1(s)(A) and 24(a).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of October 1, 2023, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION - May 15, 2024

Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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