

**The IRS granted the claimant’s request to have her LLC business retroactively classified as an S-corporation effective January 1, 2023. Because unemployment insurance benefits are subject to FUTA, the DUA is bound by the IRS’s decision to retroactively apply S-corporation status. This means that the claimant worked for a corporation during her base period, and her wages may be used to establish a claim for benefits pursuant to G.L. c. 151A, §§ 1(s)(A) and 24(a).**

**Board of Review  
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**Issue ID: 0081 2540 30**

### 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 8, 2023, which was denied in a determination issued on December 8, 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 January 19, 2024. 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, she was disqualified under G.L. c. 151A, §§ 1(h) and 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 evidence pertaining to the employer’s federal tax classification. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 wages could not be used to establish an unemployment claim because her 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 consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant filed an unemployment claim effective October 8, 2023. The base period of the claim is from January 1, 2023, through October 7, 2023.

2. The claimant works for the employer (the business), which is a human resources communications and consulting company.
3. The claimant is the only owner of the business.
4. The claimant originally organized the business as a sole proprietorship in September 2018.
5. On March 15, 2023, the claimant submitted paperwork to the Internal Revenue Service (IRS) requesting that the business be converted to an S Corporation.
6. The claimant has been operating her business as an S Corporation since March 15, 2023.
7. On April 21, 2023, the claimant received a letter from the IRS detailing that her request to convert her business to an S Corporation was approved to begin January 1, 2024, through December 31, 2024, but denied for 2023, because she submitted her request for 2023 late.
8. The claimant submitted an appeal of the decision to begin operating her business as an S Corporation in 2024, requesting her S Corporation status become effective for 2023. The claimant included her receipt of the initial mailing of March 15, 2023, to show the date she mailed the request and that it was not late.
9. The claimant spoke with her accountant and business attorney who advised her to continue to operate as an S Corporation throughout 2023, and that the IRS will accept her taxes as an S Corporation at the time of filing.
10. On February 21, 2024, the claimant filed the taxes for the employer as an S Corporation, which was accepted as filed.
11. On April 11, 2024, the claimant received a letter from the IRS, detailing that her request to convert her business to an S Corporation for 2023 was approved from January 1, 2023, through December 31, 2023.

Credibility Assessment:

The claimant's testimony is deemed to be credible. The claimant provided consistent, detailed, and forthcoming testimony at both the original hearing and both remand hearings. There is nothing in the record to suggest that any of the claimant's testimony was not credible.

## 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 consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. 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 her weekly benefit rate and at least \$6,000.00 in her base period. G.L. c. 151A, § 24(a).<sup>1</sup> 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 . . . .

The employer in this case was originally organized as a sole proprietorship and the claimant was its sole owner. Consolidated Findings ## 3 and 4. As the claimant is the sole owner of the business entity for which she works, we take a close look at the employer's tax classification. It matters whether the employer elected to be treated as a sole proprietorship or a corporation while the claimant was drawing her salary. As explained by the Massachusetts Appeals Court:

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).

On March 15, 2023, the claimant requested to have her business be reclassified as an S-corporation for federal tax purposes. Consolidated Finding # 5. The IRS ultimately granted this change in classification for the employer effective January 1, 2023. Consolidated Finding # 11.

Because the unemployment insurance 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 how the employer is recognized as an entity under state law. 26 C.F.R. § 301.7701-1(a)(1). "When the states created LLCs, the IRS did not create a new tax classification, but instead applied the three tax entity classifications

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<sup>1</sup> 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 her 2023 claim was \$6,000.00.

it had always used for business taxpayers: corporation, partnership, or sole proprietor. . . .” U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) No. 26-08 (Sept. 8, 2008), p. 1–2. Therefore, the DUA is bound by the IRS determination retroactively classifying the instant employer as an S-corporation beginning January 1, 2023.

As the IRS has determined that the instant employer made the election to be treated as a corporation under 26 C.F.R. § 301.7701-3 as of January 1, 2023, the remuneration that the employer paid the claimant during her based period does qualify as wages for purposes of monetary eligibility under G.L. c. 151A, §§ 1(s)(A) and 24(a). A review of UI Online, the DUA’s electronic recordkeeping system, shows the claimant was paid wages totaling \$11,639.34 during her base period, thus satisfying the minimum earnings requirement to be monetarily eligible for a claim.

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

The review examiner’s decision is reversed. The claimant is monetarily eligible for benefits in connection with her 2023-01 unemployment claim.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 28, 2024**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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](http://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