

The claimant has worked for and is a sole proprietor of the employer, an LLC. He filed an unemployment claim when the business closed. Because the claimant did not produce evidence that the claimant’s LLC employer elected to be treated as a corporation for federal tax purposes, his wages could not be used to establish monetary eligibility for the claim pursuant to G.L. c. 151A, § 24(a).

**Board of Review
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Issue ID: 334-FHJP-4R92

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, effective July 28, 2024, which was denied in a determination issued on August 28, 2024. He appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on September 6, 2025. 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 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 he owned the employer as a sole proprietorship and the employer was taxed as an LLC, 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 are set forth below in their entirety:

1. The employer’s establishment is a tavern.
2. The employer’s establishment is a Limited Liability Company (LLC). The employer’s establishment was established in June of 2023.

3. The claimant is the owner/single member of the employer's establishment.
4. The employer's establishment is taxed as an LLC.
5. The claimant was paid as a W-2 worker for the employer's establishment performing the tasks at the employer's establishment of day-to-day operations such as inventory management, making repairs, and staff management.
6. The claimant was paid a weekly salary of anywhere from \$800-\$2,000 per week.
7. The claimant's last date of work performing tasks for the employer's establishment and being paid as a W-2 worker was sometime in April 2024 or May 2024 with the exception of the claimant sometimes also working in July 2024 for the employer's establishment performing tasks winding down the employer's establishment in preparation of the sale of the employer's establishment.
8. On a Statement of Earnings issued to the claimant from the employer's establishment with a check date of July 26, 2024, for the Period Begin July 15, 2024, and Period End July 22, 2024, the claimant's current gross pay is listed as \$800.00 and gross Year to Date gross earnings are listed as \$20,600. This is the last Statement of Earnings the claimant was issued from the employer's establishment.
9. On July 27, 2024, the claimant sold the employer's establishment. The claimant is in the process of officially dissolving the employer's establishment. The claimant has sold the employer's establishment to his former staff members. The claimant decided to sell the employer's establishment due to the claimant's own health issues.
10. The claimant filed an initial unemployment claim effective the week beginning July 28, 2024 (hereinafter 2024-01 initial unemployment claim). This claim's Benefit Year End Date is July 26, 2025. The employer's establishment is the only base period employer on this claim.
11. The Department of Unemployment (hereinafter DUA) Monetary Summary Record lists the following correct gross paid wages for the claimant during the base period from the employer's establishment:

<u>3rd Quarter</u>	<u>4th Quarter</u>	<u>1st Quarter</u>	<u>2nd Quarter</u>
2023	2023	2024	2024
\$2,900	\$15,100	\$11,000	\$7,200

Total: \$36,200

12. On August 23, 2024, the DUA issued a Notice of Disqualification excluding the claimant's base period wages under Section 6(d) of the Law with regards to the employer's establishment. On the Disqualification, the DUA wrote: "The claimant's base period wages are exempt." As a result of the Determination, the claimant was also deemed monetarily ineligible for benefits on his 2024-01 initial unemployment claim.
13. In response to the Notice of Disqualification, the claimant appealed.
14. The employer did not file an IRS Form 2553 electing to pay taxes as an S-Corporation. The employer is not taxed as an S-corporation.
15. The claimant was advised by his accountant that the claimant's personal tax returns and the employer's tax returns were filed collectively together through the claimant's personal tax forms. The claimant does not want to submit his personal tax returns or the employer's tax returns to the DUA for consideration and wants to stand on the record without submitting the tax returns.

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. As discussed more fully below, we agree with 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 \$6,300.00 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

At the time the claimant filed his unemployment claim, the employer was operating as a limited liability company (LLC). Consolidated Finding # 4. The default tax treatment of an LLC is as a sole proprietorship (single-member LLC) or a partnership (two or more member LLC), unless the LLC files a tax form with the IRS electing to be treated as a corporation for tax purposes. As the claimant here 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 remuneration. Consolidated Finding # 3. As explained by the Massachusetts Appeals Court:

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 2024 claim was \$6,300.00.

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).

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 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. Accordingly, it matters whether the instant employer elected to be treated as a sole proprietorship or a corporation while the claimant was drawing his salary.

In this case the employer did not file a form with the IRS electing to be taxed as an S-corporation. Consolidated Finding # 14. Absent other evidence to the contrary, and the claimant has not produced any, we must presume the employer was taxed as a sole proprietorship. *See* Consolidated Finding # 15. As the employer is not taxed as a distinct legal entity from the claimant, all services he performed for the LLC are exempt, and wages earned from this employer during his base period may not be used to satisfy the monetary requirements of G.L. c. 151A, § 24(a).

We, therefore, conclude as a matter of law that the claimant’s base period earnings from the instant employer did not constitute wages that could establish a claim for regular unemployment benefits pursuant to G.L. c. 151A, §§ 1 and 24(a).

The review examiner’s decision is affirmed. The claimant is ineligible for benefits under his 2024-01 claim.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 21, 2025



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

**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