

In accordance with G.L. c. 151A, § 24A and 430 CMR 12.04, the employer tax preparation business could not be denied seasonal employer status based solely on its president's ability to work as a tax preparer outside of the seasonal period and the possibility that she might, at some point, perform such work outside of the seasonal period.

**Board of Review
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Issue ID: SEC24A-1Z-20-029

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which denied seasonal employer status for the year 2021. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On November 20, 2020, DUA determined that the employer would not receive seasonal employer status for the coming year. The employer appealed the determination, and the employer's owner and sole employee attended the hearing. In a decision rendered on August 23, 2021, the review examiner affirmed the agency determination, concluding that seasonal certification was properly denied pursuant to G.L. c. 151A §§ 1(z) and 24A. The Board accepted the employer's application for review.

Seasonal employer status was denied after the review examiner determined that the employer's president did not work in a functionally distinct occupation during the identified seasonal period, thus, the employer was not entitled to seasonal status under G.L. c. 151A, §§ 1(z) and 24A. 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 employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the employer was not a seasonal employer because the company president acknowledged that she is available to perform the same duties as a tax preparer outside of the seasonal period, 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 employer filed an application for designation as a seasonal employer under the provisions of Section 24A & 1(s). The application was dated 12/9/2020.
2. The application indicated seasonal operation for the tax preparer position for on-time tax filers beginning 2/8/2021 through 4/28/2021, for the tax preparer

position for corporate tax extensions 8/9/2021 through 8/15/2021 and for the tax preparer position for personal tax extensions from 10/4/2021 through 10/15/2021 for a total of 15 weeks.

3. Since the application has been filed, the employer changed the dates for on-time tax filers for 2/18/2021 through 5/17/2021.
4. The employer operates a tax preparation business which remains open year-round with a physical location.
5. The employer hires tax preparers to perform tax returns during the weeks listed on the application.
6. The Company President normally performs administrative work outside the weeks listed on the application.
7. The Company President is available outside of the seasonal application period to prepare tax returns for any late filers.
8. The Company President has never prepared taxes outside the weeks on the seasonal application even though she is available.
9. On 11/20/2020, the DUA issued the employer a Seasonal Determination denying the request for seasonal certification for the tax preparer position for the three positions listed in the application.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. There appears to be a typographical error in Finding of Fact # 1, which states, in relevant part, that the application was dated December 9, 2020. As the uncontested evidence shows, the employer filed the application on November 13, 2020, and we believe that the review examiner intended to find that the application was dated November 13, 2020. In adopting the remaining findings, we deem 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 employer is not entitled to seasonal status.

An employer's status as a seasonal employer is governed by G.L. c. 151A, §§ 1(z) and 24A. In relevant part, § 1(z) defines a seasonal employer as:

[A]n employer that, because of climatic conditions or the nature of the product or service, customarily operates all or a functionally distinct occupation within its business only during a regularly recurring period or periods of less than 20 weeks for all seasonal periods during a calendar year.

The review examiner denied the employer seasonal status because he concluded that, although its president had not previously performed any work as a tax preparer outside of the seasonal period, she was available to perform work as a tax preparer throughout the 2021 calendar year. *See* Findings of Fact ## 2 and 3. This was in error.

As we have previously held, “[t]he practice of denying seasonal employer status based on the possibility that an employer may do work outside the seasonal period is inconsistent with the accountability mechanism” articulated under the provisions of G.L. c. 151A, § 24A(e), and 430 CMR 12.04(3) and (4). Board of Review Decision S24A-1Z-19-082 (Feb. 7, 2020). Pursuant to the aforementioned provisions, an employer has an affirmative obligation to notify the DUA of any seasonal work performed for 20 or more weeks and furnish the DUA with information distinguishing seasonal from non-seasonal wages. The DUA may then use this information to redetermine an employer’s seasonal status based on when and what kind of work an employee actually performed.

Although the company president is available to perform work as a tax preparer throughout the calendar year, we see no reason why the present employer would not abide by the statutory and regularly requirement to promptly report work performed outside of the seasonal period. Until then, the DUA is precluded from denying seasonal employer status in its initial determination based solely on the possibility that an employee is capable of performing seasonal work outside the seasonal period.

We, therefore, conclude that the review examiner erred as a matter of law by denying the employer seasonal status under G.L. c. 151A § 24A, based solely on the possibility that its sole employee might perform tax preparation work outside of the defined seasonal period.

The review examiner’s decision is reversed. The employer shall be granted seasonal employment status for the year 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 18, 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