

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**ADAM P HOFFMAN**  
Claimant

**FAMILY FUNERAL PLANNING INC.**  
Employer

**APPEAL 22A-UI-08934-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20  
Claimant: Appellant (1R)**

Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.6(2) – Timely Appeal

**STATEMENT OF THE CASE:**

Adam P Hoffman, the claimant/appellant, filed an appeal from the March 24, 2022 (reference 01) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits as of March 22, 2020 because Mr. Hoffman was still employed with the employer for the same hours and wages as in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on May 24, 2022. Mr. Hoffman participated personally. The employer participated through Colleen Wigg, vice president, administration, and Marty Nelson, human resources manager. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Mr. Hoffman's appeal filed on time?  
Is Mr. Hoffman able to and available for work?  
Is Mr. Hoffman totally, partially, or temporarily unemployed?  
If so, is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Hoffman at the correct address on March 24, 2022. The UI decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by April 3, 2022. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. April 3, 2022 was a Sunday; therefore, the deadline was extended to Monday, April 4, 2022. Mr. Hoffman received the UI decision in the mail on, or about April 5, 2022.

IWD issued two additional UI decisions on March 31, 2022 finding Mr. Hoffman was overpaid REGULAR (state) UI benefits, Pandemic Emergency Unemployment Compensation (PEUC) benefits, state Extended Benefits, Federal Pandemic Unemployment Compensation (FPUC)

benefits and Lost Wage Assistance Payments (LWAP) benefits. Mr. Hoffman received those decisions in the mail on, or about, April 8, 2022. Mr. Hoffman filed an appeal via email on April 11, 2022. About three hours later, Mr. Hoffman filed another appeal via fax. IWD Appeals Bureau received both appeals on April 11, 2022. IWD set up appeals for the two overpayment UI decisions, and the March 24, 2022, (reference 01) UI decision.

The administrative law judge further finds: Mr. Hoffman began working for the employer, a base period employer, in 2013. He works as a full-time advance funeral planner selling the employer's products, primarily in-person, to older people. The employer pays Mr. Hoffman a commission on sales he makes. The employer does not guarantee Mr. Hoffman any hours or sales. Over time, Mr. Hoffman's monthly pay has ranged from as low as \$0.00 to over \$20,000.00.

Due to the COVID-19 pandemic, Mr. Hoffman's sales decreased significantly as many people did not want to meet with Mr. Hoffman in-person. However, the employer continued to offer Mr. Hoffman the same employment despite the pandemic. Mr. Hoffman has no other base period wages. Mr. Hoffman filed an initial UI claim because his monthly income decreased. In his appeal, Mr. Hoffman wrote that he, unlike "...many who were unemployed before March 22, 2020, [who] remain unemployed today and continue to receive benefits as more of a handout, ...has been working and tr[ying] to make ends meet, remains employed and [has] ask[ed] for a small, 7 month time of assistance as a hand up rather than a hand out...."

Mr. Hoffman applied for federal Pandemic Unemployment Assistance (PUA) benefits on May 9, 2020. IWD had not issued a decision on Mr. Hoffman's PUA eligibility.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Mr. Hoffman's appeal of the March 24, 2022, (reference 01) UI decision was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

2. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (2) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
    - (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Mr. Hoffman did not receive the March 24, 2022, (reference 01) UI decision before the deadline and, therefore, could not have filed an appeal by the appeal deadline. The notice provision of the decision was invalid. Mr. Hoffman filed an appeal within ten days of when he received the decision. Mr. Hoffman's appeal was filed on time.

The administrative law judge further concludes as follows:

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In this case, the employer continued to offer Mr. Hoffman the same employment as of March 22, 2020. The fact that Mr. Hoffman's sales went down does not mean his employment changed. Mr. Hoffman's argument that he should be eligible for UI benefits because he is "worthy," as he defines worthiness, by his continued employment, his efforts to make ends meet, and his "hand up rather than hand out" ethic, is not supported by law and is entirely unpersuasive. Mr. Hoffman's characterization of the "many who were unemployed before March 22, 2020" (as if other claimants' UI claims, or lives revolve around the Mr. Hoffman and/or his UI claim date) is condescending and self-centered. The circumstances of other people's lives, whether they file an UI claim or not, is not one of the legal issues in Mr. Hoffman's appeal of a decision IWD made about his eligibility for UI benefits, and Mr. Hoffman's attempt to make it so by belittling others to try to get what he wants – in this case UI benefits – is basic and petty. Since Mr.

Hoffman is still employed in his job at the same pay and same hours as of March 22, 2020, the effective date of his claim, benefits are denied.

**DECISION:**

Mr. Hoffman's appeal of the March 24, 2022 (reference 01) UI decision was filed on time. The March 24, 2022 (reference 01) UI decision is **AFFIRMED**. Mr. Hoffman is still employed in his job at the same pay and same hours as of March 22, 2020, the effective date of his claim. Benefits are denied.

**REMAND:**

The issue of Mr. Hoffman's eligibility for federal PUA benefits is **REMANDED** (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

July 28, 2022  
Decision Dated and Mailed

dz/kmj

**NOTE TO MR. HOFFMAN:**

- You already applied for federal Pandemic Unemployment Assistance (PUA) benefits.
- IWD has not issued a decision on your PUA eligibility. Your case has been remanded (sent back) to the IWD Benefits Bureau for investigation and a decision.
- **If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off the REGULAR (state) UI overpayment.**
- **If IWD finds you not eligible for PUA benefits, you are required to repay the benefits you've received so far.**
- To check on your PUA application contact IWD online, via email, or by phone.

- Online: Go to [www.iowaworkforce.gov](http://www.iowaworkforce.gov), click on "Contact Us" then click on "Unemployment Help Request" and complete the form.
- Email: [uiclaimshelp@iwd.iowa.gov](mailto:uiclaimshelp@iwd.iowa.gov)
- Phone: 1-866-239-0843

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas