

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MARY H KARR  
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MARY H KARR  
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OELWEIN IA 50662

TOLL GATE RESTAURANT & LOUNGE  
112 CHICAGO ST  
WATERLOO IA 50701-2809

Appeal Number: 04A-UI-04168-DWT  
OC 02/08/04 R 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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 are based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.3-5 – Business Closing

STATEMENT OF THE CASE:

Mary H. Karr (claimant) appealed a representative's April 7, 2004 decision (reference 01) that denied her request to have her claim be redetermined as a business closing because Toll Gate Restaurant & Lounge, Inc. (employer) did not permanently close for unemployment insurance purposes. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 5, 2004. The claimant participated in the hearing. The employer responded to the hearing notice but was not available for the scheduled hearing because no one answered at the phone number the employer provided. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the claimant's unemployment insurance claim be redetermined as a business closing?

FINDINGS OF FACT:

The claimant worked for Toll Gate Restaurant & Lounge. The owners sold this business to another person. From January 29 to February 13, 2004, the new owner was not open for business because the new owner did not have a liquor license. The new owner opened the business on February 13, 2004, which was the same kind of business as Toll Gate Restaurant & Lounge. The new business is called, Chuckie's Toll Gate, Inc.

REASONING AND CONCLUSIONS OF LAW:

The regulations define going out of business to mean an establishment closes its door and ceases to function as a business. An employer is not considered to have gone out of business when the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business. 871 IAC 24.29(2).

The evidence shows the employer sold the business to a new owner, Chuckie's Toll Gate, Inc. The new owner was temporarily closed until the owner could obtain a liquor license. Temporarily closed is not the same as going out of business and ceasing to function as a business. Therefore, the claimant's request to have her unemployment insurance benefits claim redetermined as a business closing is denied.

DECISION:

The representative's April 7, 2004 decision (reference 01) is affirmed. The employer's business did not permanently close but was only sold to a new owner. The claimant's request to have her unemployment insurance claim be redetermined as a business closing is denied.

dlw/kjf