

**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**

**KONSTANTIOS J BASTAS
PO BOX 392
PELLA IA 50219**

**ANOUSIS CORPORATION
4041 E 16TH ST
DES MOINES IA 50313-3902**

**Appeal Number: 06A-UI-00138-CT
OC: 01/09/05 R: 02
Claimant: Respondent (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, 4th 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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.7(2)a(6) – Appeal from Statement of Charges
Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Anousis Corporation filed an appeal from a representative's decision dated December 22, 2005, reference 01, which held that the protest to Konstantios Bastas' claim had not been timely filed. After due notice was issued, a hearing was held by telephone on January 23, 2006. Mr. Bastas participated personally. The employer participated by Lauri Knowles, Accounting.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bastas filed a claim for job insurance benefits

effective January 9, 2005. Notice of the claim was mailed to the employer on January 12, 2005. The employer did not protest the claim because Mr. Bastas was on a temporary layoff. The notice of claim advised the employer to notify Workforce Development if Mr. Bastas' status changed from a temporary layoff. In April of 2005, Mr. Bastas refused recall to his former job. However, neither the employer nor Mr. Bastas notified Workforce Development of the work refusal and Mr. Bastas continued to receive job insurance benefits.

On August 9, 2005, the employer was mailed a statement of charges for the second calendar quarter of 2005. The statement reflected benefits having been paid to Mr. Bastas and charged to the employer's account during the quarter. The statement advised that the employer had 30 days in which to appeal from the statement of charges. The employer filed an appeal from the statement of charges on November 30, 2005. The appeal was prompted by a notice advising the employer of an increase in its unemployment tax contribution rate.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether the employer filed a timely protest to Mr. Bastas' claim. The employer did not have an issue with his entitlement when initially notified of the claim in January of 2005 as he was on a legitimate layoff. Therefore, the employer was not required to protest within the ten days allowed by Iowa Code section 96.6(2). However, the employer knew from the notice of claim that Workforce Development was to be notified of any change in Mr. Bastas' status. Workforce Development should have been notified in April of 2005 that he had refused recall to work. The employer's account could have been relieved of charges at that point had the employer established that Mr. Bastas refused recall without good cause.

In spite of the failure to notify Workforce Development that Mr. Bastas had refused recall, the employer still had an opportunity to protest his entitlement to continued benefits. The quarterly statement of charges allowed the employer 30 days in which to appeal. Given the change in his status since the employer was initially notified of the claim, the issue of Mr. Bastas' continued eligibility could have been addressed in an appeal from the statement of charges. However, the employer did not exercise its rights by filing an appeal within 30 days as required by the statement of charges and as allowed by Iowa Code section 96.7(2)a(6). The employer did not establish good cause or any compelling circumstance that prevented filing a timely appeal. Because there was no timely appeal, the statement of charges became a final determination. As such, the administrative law judge lacks jurisdiction to rule on the issue of Mr. Bastas' refusal of work. The fact that the appeal has merit cannot overcome the fact that the administrative law judge has no legal authority to change an otherwise final determination.

DECISION:

The representative's decision dated December 22, 2005, reference 01, is hereby affirmed. The employer's appeal from the statement of charges was not timely filed. Benefits are allowed, provided Mr. Bastas satisfies all other conditions of eligibility.

cfc/tjc