

**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**

**MARTA MAGANA
1110 S 8TH ST
DENISON IA 51442-2826**

**FARMLAND FOODS INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-06822-CT
OC: 06/04/06 R: 01
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 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Farmland Foods, Inc. filed an appeal from a representative's decision dated June 21, 2006, reference 01, which held that no disqualification would be imposed regarding Marta Magana's separation from employment. After due notice was issued, a hearing was held by telephone on July 18, 2006. Ms. Magana participated personally. The employer participated by Becky Jacobson, Human Resources Coordinator. Giovanna Carnet participated as the interpreter.

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: Ms. Magana was employed by Farmland Foods, Inc. from November 20, 1996 until May 26, 2006 as full-time production worker. She was

discharged because of her attendance. The employer tracks attendance on a point system and an individual is subject to discharge when she reaches 12 points.

Ms. Magana was absent on June 14, 2005, but the employer has no record of her calling to report the absence. She called 26 minutes after the start of her shift to report an absence on August 31, 2005, and 10 minutes after the start of the shift to report an absence of March 2, 2006. Ms. Magana's remaining absences were due to illness and were properly reported. The final absence that caused the discharge occurred on May 26, 2006. Ms. Magana was one hour late because she was experiencing excessive bleeding and cramping. She called to report that she would be late.

Ms. Magana received warnings about her attendance on July 25 and September 1, 2005. She received her final warning on October 25, 2005, when she was at ten points. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Magana was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. In order to sustain a disqualification from benefits, there must be a current period of unexcused absenteeism in relation to the discharge date. See 871 IAC 24.32(8).

Ms. Magana's last unexcused absence was on March 2, 2006, when she failed to give timely notice of her intent to be absent. She was not discharged until May 26, 2006. The March absence was not a current act in relation to the discharge date. Although Ms. Magana was one hour late on May 26, the tardiness was due to illness. Inasmuch as she called to report that she would be late, the period of absence is excused.

The evidence of record does not establish a current act of misconduct. As such, there is no basis for disqualification from benefits. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated June 21, 2006, reference 01, is hereby affirmed. Ms. Magana was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw