

# DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

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KATHLEEN KENNEDY TOWNSEND, Lt. Governor  
JOHN P. O'CONNOR, Secretary

Board of Appeals  
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## - DECISION -

Claimant:  
DAMIS SENATUS

Decision No.: 01156-BR-99

Date: May 7, 1999

Appeal No.: 9821640

Employer:  
PERDUE FARMS INC

S.S. No.:

L.O. No.: 12

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

## - NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: June 5, 1999

## REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner and concludes that the claimant was terminated for simple misconduct, with the meaning of Labor and Employment Article, Section 8-1003.



Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

The term "misconduct" as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises, within the meaning of Section 8-1003 of the Labor and Employment Article. (See, Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113).

The Board adopts the findings of fact of the Hearing Examiner. However, the Board does not agree that the evidence shows that the claimant tried diligently to renew his work visa prior to the expiration date. In fact, the evidence shows that the claimant was somewhat less than diligent in his efforts, despite the offered assistance of the employer. The employer's uncontested testimony (the claimant was not present) was that they reminded him in July that he needed to update his work visa and spoke with him about it again in October, even offering him time off to visit the INS office in person. The claimant apparently stated that he believed he had to go to Texas to renew the work visa, but without really looking into it.

The Board concludes from this that the claimant did not use due diligence in renewing his work visa and that this was clearly his responsibility to do so. Therefore, he was discharged for misconduct, within the meaning of LE Section 8-1003 of the law. However, since he did make some efforts, as evidenced by the fact that INS indicated to the employer that the work visa was in process, the Board does not find that his conduct rises to the level of gross misconduct, within the meaning of Labor and Employment, Section 8-1002. See, Davis v. National Security Agency, 853-BR-92, where the Board held that to the extent that a loss of required security clearance was not due to circumstances beyond the claimant's control, his termination was due to misconduct.

## DECISION

IT IS HELD THAT the claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning October 25, 1998 and the nine weeks immediately following.