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STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

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Board of Appeals
Hazel A. Warnick, Chairperson

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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.

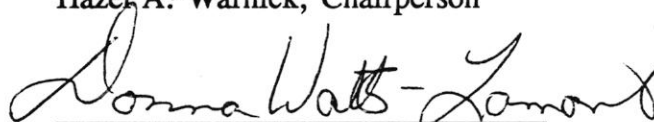
DECISION

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.

The decision of the Hearing Examiner is reversed.



Hazel A. Warnick, Chairperson



Donna Watts-Lamont, Associate Member

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2424 or 1-800-827-4839. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

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Copies mailed to:
DAMIS SENATUS
PERDUE FARMS INC
NIKKI LITTLE, HEARING COORD.
Local Office - #12

UNEMPLOYMENT INSURANCE APPEALS DECISION

DAMIS SENATUS

Before the:

SSN

Claimant

vs.

PERDUE FARMS INC

Employer/Agency

**Maryland Department of Labor,
Licensing and Regulation
Appeals Division**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9821640
Appellant: Employer
Local Office: 12 / Salisbury

February 2, 1999

For the Claimant:

For the Employer: PRESENT, INGE FROST

For the Agency: PATRICK EUSTACHE, INTERPRETER

ISSUE(S)

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD Code Annotated Labor and Employment Article, Title 8, Sections 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant was a "live hanger" for Perdue Farms, Inc. His last day of work was October 26, 1998. He was terminated when his work authorization expired. The claimant is from Haiti. His first day of work was November 12, 19987 and he had proper work documentation at that time. His employment authorization card indicated that it expired on October 26, 1998. See Employer's Exhibit #1.

Ms. Frost, the Human Relations Representative for the company testified credibly that she spoke to the claimant twice between July and October 26, 1998 requesting that the claimant take some action to secure proper authorization to work in this country once his card expired on or about October 26, 1998. The claimant indicated at that time that he been working on the problem. The employer also stated that a leave of absence would be granted for the claimant to visit the immigration office person

for the claimant to try to take care of the matter. The claimant stated that the only office that he could visit which would be able to assist the claimant was in Texas and the claimant did not have the means to go there.

As noted above, the claimant indicated to the employer that he had diligently requested an extension on his work authorization, but had heard nothing from the federal government. The employer in fact, called the immigration department prior to October 26, 1998 on the claimant's behalf to try to assist the claimant in clarifying the matter for him. A recording was heard by the employer stating that the claimant's case was being processed.

The employer rehired the claimant as of January 14, 1998.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1003 (Supp. 1996) provides for a disqualification from benefits where the claimant is discharged or suspended as a disciplinary measure for misconduct connected with the work. The term "misconduct" is undefined in the statute but has been defined as "...a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of 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." Rogers v. Radio Shack, 271 Md. 126, 132, 314 A.2d 113 (1974).


EVALUATION OF EVIDENCE

The employer discharged the claimant on October 26, 1998, because his alien card had expired and he did not have any other documentation authorizing him to work in the United States. The claimant had tried diligently to have the card renewed prior to the expiration date. The employer knew this, calling on the claimant's behalf prior to October 26, 1998, but being just told by the federal government that the claimant's case was pending.

DECISION

IT IS HELD THAT the claimant was discharged, but not for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003 (Supp. 1996). No disqualification is imposed based upon the claimant's separation from employment with Perdue Farms, Inc. The claimant may contact the local office concerning the other eligibility requirements of the law.

The determination of the Claim Specialist is affirmed.



G. R. Smith, Esq.
Hearing Examiner

Notice of Right to Petition for Review

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **February 17, 1999**.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: January 26, 1999

DW/Specialist ID: EUSB5

Seq. No.: 002

Copies mailed on February 2, 1999 to:

DAMIS SENATUS
PERDUE FARMS INC
LOCAL OFFICE #12