

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2004

GIRARDO BACA FLORES, **
 Appellant, **
 vs. ** CASE NO. 3D03-2345
ROOF TILE ADMINISTRATION, INC., **
 Appellee. ** LOWER
 ** TRIBUNAL NO. 01-26478
 **

Opinion filed December 22, 2004.

An Appeal from the Circuit Court for Miami-Dade County,
Jeri B. Cohen, Judge.

J.H. Zidell, for appellant.

Fisher & Phillips and Jim C. Polkinghorn and Kristen L.
Sampo and David A. Buchsbaum, for appellee.

Before SCHWARTZ, C.J., COPE and SHEVIN, JJ.

On Rehearing Denied

PER CURIAM.

The applicable statute provides:

440.205. Coercion of employees

No employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation

or attempt to claim compensation under the Workers' Compensation Law.

§ 440.205, Fla. Stat. (1997).

Plaintiff in this case was injured on a Friday and did not come to work thereafter. He was fired the following Wednesday. The employer had given the plaintiff two written reprimands within the preceding three months for excessive absenteeism and failing to call a supervisor when he was going to be absent. The employer argues that Mr. Garces, the employer's operations manager, fired the plaintiff for failing to call in, as required. Further, the plaintiff admitted that he did not call in, and has not offered any excuse for failing to do so. The employer maintains that this is a valid, nonretaliatory reason for firing the plaintiff.

On motion for summary judgment, however, we are obliged to read the record in the light most favorable to the plaintiff as the nonmoving party. Moore v. Morris, 475 So. 2d at 668. The testimony of Jesus Baca, the plaintiff's coworker and cousin, creates a disputed issue of material fact. Baca testified that their roofing crew leader, Marco Duque, had gotten into trouble and almost been fired because the plaintiff had been injured. Deposition of Jesus Baca, Feb. 6, 2003, at 70-72. Baca testified that he had relayed a message from the plaintiff to the crew chief that the plaintiff needed to see a doctor and

wanted the company to pay for it. Id. at 118. Baca also testified that, according to the crew leader, the plaintiff had been fired because he wanted to submit a worker's compensation claim. Id. at 73. Thus, there are disputed issues of material fact which preclude summary judgment.

Rehearing denied.

COPE and SHEVIN, JJ., concur. SCHWARTZ, C.J., dissents.