

1 So.3d 1192
 District Court of Appeal of Florida,
 Fifth District.

Pamela **ANDREWS**, Appellant,

v.

DIRECT MAIL EXPRESS, INC., Appellee.

No. 5D08-1805. | Feb. 6, 2009.

Synopsis

Background: Former employee brought workers' compensation retaliation action against employer. The Circuit Court, Volusia County, [William A. Parsons, J.](#), granted employer's motion for **directed** verdict. Former employee appealed.

[Holding:] The District Court of Appeal, [Palmer, C.J.](#), held that former employee, terminated seven weeks after filing workers' compensation claim, established prima facie case of workers' compensation retaliation.

Reversed and remanded.

West Headnotes (6)

[1] Appeal and Error

🔑 Cases Triable in Appellate Court

The standard of review for a **directed** verdict is de novo.

[1 Cases that cite this headnote](#)

[2] Appeal and Error

🔑 Appeal from ruling on motion to **direct** verdict

Appeal and Error

🔑 Effect of evidence and inferences therefrom on **direction** of verdict

In reviewing the grant of a **directed** verdict, an appellate court must view the evidence and all inferences of fact in the light most favorable to the nonmoving party and can affirm a **directed**

verdict only where no proper view of the evidence could sustain a verdict in favor of the nonmoving party.

[1 Cases that cite this headnote](#)

[3] Labor and Employment

🔑 Workers' Compensation

In order to establish a prima facie workers' compensation retaliation claim, the plaintiff must demonstrate the following elements: (1) a statutorily protected expression; (2) an adverse employment action; and, (3) a causal connection between participation in the protected expression and the adverse action. [West's F.S.A. § 440.205](#).

[4] Labor and Employment

🔑 Causal connection; temporal proximity

In order to satisfy the "causal connection" prong of a prima facie workers' compensation retaliation case, a plaintiff must, at a minimum, generally establish that the defendant was actually aware of the protected expression at the time the defendant took the adverse employment action. [West's F.S.A. § 440.205](#).

[5] Labor and Employment

🔑 Motive and intent; pretext

Labor and Employment

🔑 Presumptions and burden of proof

Once a plaintiff establishes a prima facie workers' compensation retaliation case by proving that the protected activity and a negative employment action are not completely unrelated, the burden then shifts to the defendant to proffer a legitimate reason for the adverse employment action; the burden then shifts back to the plaintiff to prove by a preponderance of the evidence that the "legitimate reason" was merely a pretext for the prohibited, retaliatory conduct. [West's F.S.A. § 440.205](#).

[6] Labor and Employment

🔑 Particular cases in general

Former employee established prima facie case of workers' compensation retaliation against employer based on her termination from employment approximately seven weeks after filing petition for workers' compensation benefits; employer was aware of workers' compensation claim, reprimands received by employee following her claim were related to the injury for which she sought compensation, employee was overlooked for promotions despite outstanding performance scores, and employee received inconsistent explanations for her termination. *West's F.S.A. § 440.205*.

Attorneys and Law Firms

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Gregory D. Snell and Deirdre E. Macbeth, of Snell Legal, Ormond Beach, for Appellee.

Opinion

PALMER, C.J.

Pamela Andrews appeals the trial court's order directing a verdict in favor of appellee, Direct Mail Express, Inc. (DME), on Andrews' claim alleging a retaliatory firing based upon the filing of a workers' compensation claim. Concluding that Andrews presented sufficient evidence to establish a prima facie case, we reverse.

[1] [2] The standard of review for a directed verdict is *de novo*. See *State v. Shaw*, 929 So.2d 1145, 1147 (Fla. 5th DCA 2006). However, in reviewing the grant of a directed verdict, an appellate court must view the evidence and all inferences of fact in the light most favorable to the nonmoving party and can affirm a directed verdict only where no proper view of the evidence could sustain a verdict in favor of the nonmoving party. See *Owens v. Publix Supermarkets, Inc.*, 802 So.2d 315, 329 (Fla.2001); *McQueen v. Jersani*, 909 So.2d 491, 492–93 (Fla. 5th DCA 2005).

Section 440.205 of the Florida Statutes provides that 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. Ms. Andrews' complaint alleged that she was discharged because of her attempt to claim benefits under the workers' compensation law.

[3] [4] [5] In order to establish a prima facie retaliation case under section 440.205, the plaintiff must demonstrate the following elements: (1) a statutorily protected expression; (2) an adverse employment action; and, (3) a causal connection between participation in the protected expression and the adverse action. See *Russell v. KSL Hotel Corp.*, 887 So.2d 372, 379 (Fla. 3d DCA 2004). In order to satisfy the “causal connection” prong of a prima facie retaliation case, a plaintiff must, at a minimum, generally establish that the defendant was actually aware of the protected expression at the time the defendant took the adverse employment action. Once a plaintiff establishes a prima facie case by proving that the protected activity and a negative employment action are not completely unrelated, the burden then shifts to the defendant to proffer a legitimate reason for the adverse employment action. The burden then shifts back to the plaintiff to prove by a preponderance of the evidence that the “legitimate reason” was merely a pretext for the prohibited, retaliatory *1194 conduct. See *Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 950 (11th Cir.2000).

[6] At trial, DME's counsel moved for entry of a directed verdict after Andrews presented her case-in-chief, contending that no causal link had been proven between the termination of Andrews' employment and the filing of her workers' compensation claim. DME's counsel argued that there had been no evidence that the person who made the actual decision to terminate Andrews knew anything about her workers' compensation claim. However, Andrews' counsel pointed out that DME's answers to interrogatories indicated that several people were involved in the termination decision, including some who did know of the filing of Andrews' workers' compensation claim. The trial court granted the motion for directed verdict and entered judgment against Andrews. This appeal timely followed.

Andrews contends that the trial court erred in directing a verdict against her because she sustained her burden of proving the causation prong required in retaliation cases since evidence was presented which indicated that DME was aware that she had filed a workers' compensation claim and there was a close proximity between said awareness and the adverse employment action. In addition, Andrews maintains that

DME engaged in a series of adverse employment actions culminating in her termination. We agree.

In that regard, **Andrews** presented evidence to support the following scenario. She sustained a fall at DME caused by a broken curb in the vicinity of DME's outside break area. She subsequently filed a petition for workers' compensation benefits. She was terminated from her employment approximately seven weeks later, after a number of incidents which she contended were retaliation for filing her claim for benefits. Among the events complained of were reprimands for taking breaks that were longer than allowed (which she contended resulted from her taking prescription medication which required her to drink excessive amounts of liquids thus requiring increased restroom usage), and for refusing to sign the warning notice given to her for that incident. In addition, despite outstanding performance scores, she was overlooked for promotions that were given to newer employees. She was terminated after being advised that the

reason for termination was unsatisfactory performance based on the way that she had handled a telephone call. However, the next day, she corresponded with the CEO of DME and asked him to investigate her termination. He advised her that she was good at what she did, and that she was not let go because she could not do the job or was not doing a good job, but simply because there was not enough work to go around.

Accordingly, we reverse the trial court's **directed** verdict and remand for further proceedings.

REVERSED and REMANDED.

LAWSON and **EVANDER, JJ.**, concur.

Parallel Citations

28 IER Cases 1412, 34 Fla. L. Weekly D288