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Employer Properly Terminated Employee Who May Have Faked Injury

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Perez v. Barrick Goldstrike Mines, Inc., 105 F.4th 1222 (9th Cir. 2024)

Thomas Perez, who worked as an underground haul truck driver for Barrick, alleged he was terminated in violation of the Family and Medical Leave Act (the "FMLA") after he took a leave of absence following an injury he allegedly suffered while on the job. An on-site emergency medical technician did not observe any outward signs of injury to Perez, no abnormalities in his X-rays or in the functioning of his heart or lungs. However, because Perez claimed he was suffering from severe pain, the doctor certified that he remain off work for five days and then, later, for another 11 days. After Barrick investigated the accident, it found no physical evidence that Perez's truck had collided with the side of the mine (as Perez had claimed) and received information from another employee that "Perez is faking a work-related injury in order to take time off to work on personal business (fixing rental properties)." The jury returned a verdict in favor of Barrick, finding that Perez had not shown by a preponderance of the evidence that he suffered a serious health condition or that he was terminated for seeking protected leave. Perez argued in the appeal that the district court should have instructed the jury that the only proper way for Barrick to challenge the medical certification that Perez had obtained would have been to obtain recertifications or subsequent opinions from additional medical experts. The Ninth Circuit held that an employer *may* present contrary medical evidence to defeat a doctor's certification in an FMLA certification case, but the statute does not require a second or third opinion or to seek recertifications. Thus, the jury was permitted to consider the non-medical evidence that Barrick had offered at trial in support of its position that Perez did not have a serious health condition within the meaning of the FMLA.

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