

## 55-Year-Old Employee Fails To Establish Age Discrimination Claim Against 3D Printing Company

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Last week, a Minnesota Federal District Court granted summary judgment in favor of a New Mexico company accused of age discrimination. Optomec, Inc., is a New Mexico-based corporation that develops and manufactures 3D printing systems. While Optomec is headquartered in Albuquerque, it has also has a facility in St. Paul, Minnesota. In 2013, Thomas Nash, who was 53-years-old at the time, began working for Optomec as a paid intern in the company's St. Paul location. During his internship, Nash received average to "tepid" reviews. Nonetheless, Optomec still hired him as a full-time lab technician the following year. Unfortunately, Nash's performance did not improve. While his supervisors believed he satisfactorily performed the basic and mundane parts of his job, they thought he lacked the critical thinking and troubleshooting skills necessary to help Optomec expand. As a result, Optomec terminated Nash's employment then Nash sued for age discrimination. Optomec moved for summary judgment on Nash's age discrimination claim. In deciding the motion, the court applied the familiar *McDonnell-Douglas* burden-shifting analysis, ultimately finding that Nash could not establish a *prima facie* case. After articulating the first three elements of a *prima facie* age discrimination claim, the court recognized that the fourth element of the claim had not yet been clearly defined in the Eighth Circuit. Indeed, some courts have required a plaintiff to show that his or her former employer hired a substantially younger replacement, others have required just a showing that the replacement was *younger* (though not substantially younger), while other courts have only required the plaintiff to show that age played a part in the termination decision. Though the court acknowledged this ambiguity, it offered no clarification. Instead, it determined that Nash could not create a genuine fact issue on the fourth element, no matter how the element was formulated. The court first reasoned that Optomec had not replaced Nash with any employee, much less one that was younger or substantially younger. "Most damning" to Nash's case, however, was the fact that Optomec had hired him twice—first as an intern when he was 53, then as a full-time employee one year later. According to the court, logic dictated that a company would not hire someone in a protected age group, then discriminate against that same individual based on his protected status less than a year later. The court further pointed out that the specific person who made the termination decision was only a few years younger than Nash, thus making it even less likely that the decision derived from age. In short, because the court found that Nash could not establish his *prima facie* case, it dismissed his age discrimination claim.<sup>[1]</sup> <sup>[1]</sup> The court also noted that Optomec had a legitimate, non-discriminatory reason to terminate Nash, and that Nash had failed to offer sufficient evidence showing that such reasons amounted to pretext.

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