IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

EDGAR MORRIS PLAINTIFF

vs. Civil Action No. 1:97cv4-D-D

GENCORP, INC. DEFENDANT

MEMORANDUM OPINION

Presently before the court is the motion of the def
judgment as against the plaintiff's claims at bar. Finc
court shall grant the motion and dismiss the plaintiff'

. Background

The defendant Gencorp, Inc. ("Gencorp"), termin
Gencorp on or about April 1, 1996. Believing that hi
discriminatory activity, the plaintiff brought this actio
charges the defendant with violating both the Age Di
("ADEA"), 29 U.S.C. § 621 et seq., as well as the Fa
29 U.S.C. § 2612 et seq. Gencorp has since moved tl
judgment as against the plaintiff's claims in this case.
motion and the matter is ripe for resolution by the cou

II. Discussion

. Summary Judgment Standard

Summary judgment shall be granted "if the pleadi
interrogatories, and admissions on file, together with
genuine issue as to any material fact and that the mov
matter of law." Fed. R. Civ. P. 56(c). The burden re
judgment to show to the district court that an absence
party's case. Celotex Corp. v. Catrett, 477 U.S. 317,

265 (1986); see Jackson v. Widnall, 99 F.3d 710, 713
Passenger Corp., 95 F.3d 396, 399 (5th Cir.1996). O
moving party, the burden shifts to the non-moving pa
a genuine issue of material fact exists. Anderson v. L
106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Texas
of Nederland, 101 F.3d 1095, 1099 (5th Cir.1996); E
(5th Cir.1994). Substantive law will determine what
U.S. at 248, 106 S.Ct. at 2510; see Nichols v. Loral V
Cir.1996). "Only disputes over facts that might affec
governing law will properly preclude the entry of sun
irrelevant or unnecessary will not be counted." Ande
see City of Nederland, 101 F.3d at 1099; Gibson v. E
Further, "[w]here the record, taken as a whole, could
the non-moving party, there is no genuine issue for tr
at 2510; see City of Nederland, 101 F.3d at 1099. Fi
U.S. at 254, 106 S.Ct. at 2513; Banc One Capital Par
1198 (5th Cir.1995); Taylor v. Gregg, 36 F.3d 453, 4
Russell Law, 19 F.3d 215, 217 (5th Cir.1994). Howe
actual controversy, that is, when both parties have sub
Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th C
Inc., 95 F.3d 1320, 1326 (5th Cir.1996); Richter v. M
96, 97 (5th Cir.1996). In the absence of proof, the co
party could or would prove the necessary facts." Litt
see Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888,
(1990).

. The Plaintiff's Claims

. Age Discrimination In Employment Act

Mr. Morris contends that his termination is in vio
Employment Act ("ADEA"). As a general rule in ca
of age discrimination, this court employs the venerab
shifting burdens of production in evaluating claims o
e.g., Sherrod v. American Airlines, Inc., --- F.3d ---,
v. Marathon Cheese Corp.,119 F.3d 330, 336 (5th Cir.
Network, Inc., 14 F.3d 261, 267 (5th Cir.1994). In a
framework:

> First, the plaintiff must establish a prima facie ca
> successful, the defendant must articulate some leg
> the challenged employment action; and third, if th
> inference of discrimination raised by the prima fa
> then must prove, by a preponderance of the evide
> articulated reason is false and that the defendant i

Walton v. Bisco Indust., Inc., 119 F.3d 368, 370 (5th C
plaintiff must come forward with proof that could co
plaintiff's age was a substantial motivating factor in t
plaintiff's employment.

In the case at bar, there is insufficient proof befor
discriminated against the plaintiff Morris because of
demonstration of a *prima facie* case, coupled with the disb
reasons for the discharge, may be sufficient to permit
intent. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502,
407 (1993); Walton, 119 F.3d at 371; Bodenheimer v
(5th Cir. 1994). That such proof *may* be sufficient in so
be so in every instance, however. When looking for
discrimination, little can be found in support of the p

comprised of speculative and inadmissable statement
enough to create a genuine issue of material fact on tl
case so as to permit the submission of this matter to a
the entry of a judgment as a matter of law on this clai

. Family and Medical Leave Act of 1993

Under the provisions of the Family and Medical Leave Act ("FMLA"), an eligible employee is entitled to a total of twelve (12) workweeks of leave during any twelve (12) month period "[b]ecause of a serious health condition that makes the employee unable to perform the functions of the position of such employee."[1] 29 U.S.C. § 2612(a)(1)(D) (Supp. 1994). It is unlawful for any employer to deny the exercise of any right provided for under the FMLA. 29 U.S.C. § 2615(a)(1) (Supp. 1994). In this case, Mr. Morris does not c
terminated for taking leave protected under the FML
him to prevent the taking of future leave protected un

> I do not believe that Gencorp fired me for taking l
> took medical leave and because of my age, Robins
> substantial amount of medical leave in the future.
> expenses that I would impose on the company bec

Exhibit "1" to Plaintiff's Response, Affidavit of Edga
arguing that the FMLA does not encompass claims w
nor taken FMLA leave. Indeed, there is support for t
E.E.O.C. v. R.J. Gallagher Co., 959 F. Supp. 405, 40
concerned with medical leave that has actually been r
court need not decide the issue, for even if this court

[1] The FMLA also provides this leave in three other instances: 1) because of the birth of a son or daughter of the employee and in order to care for such son or daughter; 2) because of the placement of a son or daughter with the employee for adoption or foster care; or 3) in order to care for the spouse, or a son or daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition. 29 U.S.C. § 2612(a)(1)(A)-(C) (Supp. 1994).

plaintiff has failed to come forward with sufficient pr

As with the plaintiff's claim arising under the AD
before the court to demonstrate a causal connection b
i.e., anticipated medical leave, and the plaintiff's termi
before the court is that the plaintiff took valid medica
witnessed the plaintiff in a sickly condition, and that
which Gencorp paid substantial benefits. In light of t
cannot say there is a genuine issue of material fact re
defendant is entitled to the entry of a judgment as a m

III. Conclusion

Upon consideration, the undersigned is of the opi
the entry of summary judgment on the plaintiff's clai
When faced with a properly supported motion for su
come forward with sufficient proof in support of his
ADEA and the FMLA. There are no genuine issues
defendant is entitled to the entry of a judgment as a m

A separate order in accordance with this opinion

This the _____ day of April 2001.

_____
United States District Judge

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GENCORP, INC. DEFENDANT

ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this da

) the defendant's Motion for Summary Judgme

) the plaintiff's claims are hereby DISMISSED;

) this case is CLOSED.

SO ORDERED, this the _____ day of April 200

_____
United States District Judge