

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 10-2737

Tony Dam,	*
	*
Appellant,	*
	* Appeal from the United States
v.	* District Court for the
	* District of Minnesota.
Graco, Inc.; Jim Badzinski, Manager,	*
	* [UNPUBLISHED]
Appellees.	*

Submitted: January 18, 2011
Filed: January 19, 2011

Before MELLOY, GRUENDER, and BENTON, Circuit Judges.

PER CURIAM.

Tony Dam appeals the district court's¹ adverse grant of summary judgment in his employment-discrimination action against his former employer Graco, Inc. (Graco). After careful de novo review, *see Murphy v. Mo. Dep't of Corr.*, 372 F.3d 979, 982 (8th Cir. 2004), this court concludes that summary judgment was properly granted. Even assuming Dam made a prima facie case of discrimination, Graco presented a valid, non-discriminatory reason for his termination – poor job performance that did not improve – and Dam failed to present a triable issue of fact

¹The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota.

on whether that reason was a pretext for discrimination. *See Richmond v. Bd. of Regents of the Univ. of Minn.*, 957 F.2d 595, 598 (8th Cir. 1992) (poor job performance is valid, non-discriminatory reason for termination; defendants produced documentation that plaintiff's performance was unsatisfactory, plaintiff ignored progressive warnings, and performance did not improve).

This court affirms. *See* 8th Cir. R. 47B.
