



In the Matter of:

RICK JACKSON,

ARB CASE NO. 07-050

COMPLAINANT,

ALJ CASE NO. 2006-STA-037

v.

DATE: October 31, 2008

SNE TRANSPORTATION COMPANY, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

Rick Jackson filed a complaint with the United States Department of Labor alleging that his former employer, SNE Transportation Company, Inc., fired him after he complained to management that he had been assigned to drive the company's trucks in violation of the maximum driving time permitted under federal regulations.¹ Jackson claims that this action violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified.²

The STAA protects from discrimination employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. SNE moved for summary decision, arguing that Jackson

¹ 49 C.F.R. § 395.8 (2007).

² 49 U.S.C.A. § 31105 (West 2005). The STAA has been amended since Jackson filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). It is not necessary to decide whether the amendments are applicable to this complaint, because they are not relevant to the issues presented by the case and thus, they would not affect our decision.

had not engaged in activity that the STAA protects, or if he did, he was not fired because of that activity. A Department of Labor Administrative Law Judge (ALJ) granted summary decision to SNE and recommended that Jackson's complaint be dismissed. The Administrative Review Board automatically reviews an ALJ's recommended STAA decision.³ We affirm.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board her authority to issue final agency decisions under STAA.⁴ We review a recommended decision granting summary decision de novo. That is, the standard the ALJ applies also governs our review.⁵ The standard for granting summary decision is essentially the same as that found in the rule governing summary judgment in the federal courts.⁶ Accordingly, summary decision is appropriate if there is no genuine issue of material fact. The determination of whether facts are material is based on the substantive law upon which each claim is based.⁷ A genuine issue of material fact is one, the resolution of which "could establish an element of a claim or defense and, therefore, affect the outcome of the action."⁸

We view the evidence in the light most favorable to the non-moving party and then determine whether there are any genuine issues of material fact and whether the ALJ correctly applied the relevant law.⁹ "To prevail on a motion for summary judgment, the moving party must show that the nonmoving party 'fail[ed] to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial.'"¹⁰ Accordingly, a moving party may prevail by pointing to the "absence of evidence proffered by the nonmoving party."¹¹ Furthermore, a

³ 29 C.F.R. § 1978.109(c)(1)(2007).

⁴ Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

⁵ 29 C.F.R. § 18.40 (2008).

⁶ Fed. R. Civ. P. 56.

⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

⁸ *Bobreski v. United States EPA*, 284 F. Supp. 2d 67, 72-73 (D.D.C. 2003).

⁹ *Lee v. Schneider Nat'l, Inc.*, ARB No. 02-102, ALJ No. 2002- STA-025, slip op. at 2 (ARB Aug. 28, 2003); *Bushway v. Yellow Freight, Inc.*, ARB No. 01-018, ALJ No. 2000-STA-052, slip op. at 2 (Dec. 13, 2002).

¹⁰ *Bobreski*, 284 F. Supp. 2d at 73 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

¹¹ *Bobreski*, 284 F. Supp. 2d at 73.

party opposing a motion for summary decision “may not rest upon the mere allegations or denials of [a] pleading. [The response] must set forth specific facts showing that there is a genuine issue of fact for the hearing.”¹²

DISCUSSION

We have reviewed the entire record herein. The ALJ thoroughly and fairly examined the evidence each party submitted. After viewing the evidence and drawing inferences in the light most favorable to Jackson, the ALJ awarded summary decision to SNE because he found that no issue of fact existed as to whether Jackson engaged in activity that the STAA protects or whether SNE discharged him because of protected activity. The record supports these findings. Therefore, we adopt the ALJ’s recommended decision and order as our own.¹³ Accordingly, Jackson’s complaint is **DISMISSED**.

SO ORDERED.

OLIVER M. TRANSUE
Administration Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹² 29 C.F.R. § 18.40(c). See *Webb v. Carolina Power & Light Co.*, No. 1993-ERA-042, slip op. at 4-6 (Sec’y July 17, 1995).

¹³ See *Jackson v. SNE Transp. Co., Inc.*, 2006-STA-037 (ALJ Jan. 24, 2007), available at ([http://oalj.dol.gov/Decisions/ALJ/STA/2006/JACKSON_RICK_v_SNE_TRANSPORTATION_C_2006STA00037_\(JAN_24_2007\)_103348_CADEC_SD.PDF](http://oalj.dol.gov/Decisions/ALJ/STA/2006/JACKSON_RICK_v_SNE_TRANSPORTATION_C_2006STA00037_(JAN_24_2007)_103348_CADEC_SD.PDF)).