



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

FORD MOTOR COMPANY -
BUFFALO STAMPING PLANT,

Respondents.

OSHRC Docket No. 10-1483

APPEARANCES:

John Shortall, Attorney; Heather R. Phillips, Counsel for Appellate Litigation; Joseph M. Woodward, Associate Solicitor; M. Patricia Smith, Solicitor; U.S. Department of Labor, Washington, DC

For the Complainant

Patricia A. Poole; Baker & Hostetler, LLP, Cleveland, OH

For the Respondent

REMAND ORDER

Before: ROGERS, Chairman and ATTWOOD, Commissioner.

BY THE COMMISSION:

At issue on review is a decision of Administrative Law Judge John H. Schumacher granting summary judgment for Ford Motor Company – Buffalo Stamping Plant (“Ford”) and thereby vacating a citation issued to Ford pursuant to the Occupational Safety and Health Act of 1970 (“OSH Act”), 29 U.S.C. § 651 *et seq.* For the following reasons, we reverse the judge’s decision and remand this case for further proceedings consistent with this order.

Following an inspection, OSHA issued Ford a willful citation alleging a violation of 29 C.F.R. § 1910.179(ø)(3)(i), which requires that “any unsafe conditions” disclosed by required inspections of a crane “shall be corrected before operation of the crane is resumed.” Ford

contested the citation and, after the completion of discovery, filed a Motion for Summary Judgment. The Secretary then filed a Cross-Motion for Summary Judgment. In his decision, the judge granted Ford's motion and denied the Secretary's cross-motion. In her Petition for Discretionary Review, the Secretary contends that the judge should have denied both motions based on her assertion that there remain genuine disputes of material fact.¹

The requirements for granting summary judgment are well established: there must be "no genuine dispute as to any material fact," and a party must be "entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); *Van Buren-Madawaska Corp.*, 13 BNA OSHC 2157, 2159 (No. 87-214, 1989) (consolidated).² In reviewing a motion for summary judgment, a judge is not to decide factual disputes. *Gallo v. Prudential Residential Servs.*, 22 F.3d 1219, 1224 (2d Cir. 1994). Rather, the role of the judge is to determine whether any such disputes exist.³ *Id.* When determining if there is a genuine factual dispute, the fact finder must resolve all ambiguities and draw all reasonable inferences in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Tufariello v. Long Island R.R. Co.*, 458 F.3d 80, 83 (2d Cir. 2006). Thus, not only must there be no genuine dispute as to the evidentiary facts, but there must also be no controversy as to the inferences to be drawn from them. *Schwabenbauer v. Bd. of Educ. of City Sch. Dist. of City of Olean*, 667 F.2d 305, 313 (2d Cir. 1991). These principles are not altered when both parties move for summary judgment, and each party's motion must be independently evaluated under them. *Id.* at 313-314; *Van-Buren-Madawaska Corp.*, 13 BNA

¹ Following the Direction for Review, Ford filed a motion seeking reconsideration of the Direction for Review or, in the alternative, affirmance of the judge's decision. Although this motion was received out of time, OSH Act § 12(j), 29 U.S.C. § 661(j) (specifying that judge's report becomes Commission final order unless directed for review within thirty days), we have considered Ford's arguments in reaching our disposition. Ford has also requested oral argument, which we find unnecessary in order to dispose of this matter. We note that, in filing its motion and request for oral argument, Ford failed to comply with Commission Rule 40(a), in failing to state whether the Secretary opposes or does not oppose the motion and request. 29 C.F.R. § 2200.40(a).

² Rule 56 of the Federal Rules of Civil Procedure applies to summary judgment motions in Commission proceedings. See Commission Rule 2, 29 C.F.R. § 2200.2.

³ We note that the parties have not availed themselves of Commission Rule 61, 29 C.F.R. § 2200.61, which permits parties to submit a case for a decision without a hearing when certain requirements are met. Neither party mentions Commission Rule 61 in its respective motion for summary judgment, nor did the parties file the required joint stipulation of fact.

OSHC at 2159 & n.2. A judge is not obligated to grant judgment as a matter of law to either side, and may deny both motions. *Id.*

We find that the judge erred in granting summary judgment for Ford. The parties' arguments show that there are genuine disputes of material fact. In particular, they disagree on the meaning of Ford's crane inspection reports and related work orders with respect to the requirements of the cited standard. The judge did not acknowledge this factual disagreement in his decision. And when we evaluate Ford's summary judgment motion and view the record evidence—as we must—in the light most favorable to the Secretary, drawing all reasonable inferences in her favor, we find that Ford has not shown that it is entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 255 (1986). If we were to evaluate the Secretary's cross-motion in the same fashion, we would be compelled to find that she also has not shown entitlement to judgment as a matter of law.⁴ *Id.*

Accordingly, we reverse the judge's July 12, 2011 decision, and direct the judge on remand to conduct further proceedings consistent with this order.

SO ORDERED.

/s/
Thomasina V. Rogers
Chairman

/s/
Cynthia L. Attwood
Commissioner

Dated: August 30, 2011

⁴ As the Secretary now asserts that there are genuine disputes as to material fact, we deem her Cross-Motion for Summary Judgment effectively withdrawn.