

**COURT OF APPEALS**

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Roberta Martin, Slots Department,

Appellant

Case No: 18-AC-003

v.

Date: September 28, 2018

Garon Smith,

Respondent.

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**FINAL DECISION**

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This matter has come before Appellate Judges Sharon House, Leland Wigg-Ninham and Susan G. Daniels.

**INTRODUCTION**

The Oneida Personnel Commission overturned a written warning issued to the Respondent, Garon Smith, on November 18, 2017. The Appellant, Roberta Martin, appealed the Oneida Personnel Commission decision to this Court. The decision of the Oneida Personnel Commission is affirmed in part, reversed in part, and modified.

**JURISDICTION**

The Court of Appeals has jurisdiction over this matter per §801.8-2(a)(b) of the Oneida Judiciary Law which gives this Court exclusive jurisdiction to review appeals of agency and administrative decisions. The Oneida Personnel Commission is an original hearing body whose decisions may be reviewed by the Appellate Court.

**BACKGROUND**

On November 18, 2017, Garon Smith (hereinafter "Smith"), Slot Representative for the Oneida Casino, was issued a written warning by his supervisor, Roberta Martin (hereinafter "Martin"), Slots Department Supervisor, for violating Oneida Personnel Policies and Procedures Section V.D.2.4), Personal Actions and Appearance, a) Threatening, attempting or doing bodily harm to

another person. (T). Smith appealed the action to the Area Manager, Dorothy Antone, who upheld the written warning on December 13, 2017. Smith then appealed the Area Manager's decision to the Oneida Personnel Commission (hereinafter, "OPC") who overturned the written warning on March 28, 2018 due to procedural irregularities. Martin, pursuant to §805.5-2(a) of the Rules of Appellate Procedure, filed a Notice of Appeal with this Court on April 30, 2018. After review of the information contained in the Notice of Appeal and the OPC decision, the Court of Appeals accepted this case for review on May 30, 2018.

### ISSUE

Did the citation of the incorrect infraction on the Disciplinary Action Form justify overturning the disciplinary action?

### ANALYSIS

There is no disagreement about the operative facts. Martin is Smith's supervisor. Martin instructed Smith to clean up around his work area. Smith refused to do as directed. Martin issued a disciplinary action to Smith for his refusal to carry out a directive and in doing so cited the wrong infraction.

When Martin met with Smith to issue the disciplinary action, Smith noted that the citation indicated was different from what he was told he was being disciplined for. Martin maintained the position that although the wrong infraction was listed on Smith's Disciplinary Action Form, the written warning was, in fact, for insubordination. Martin contended that listing the wrong infraction was harmless clerical error. The Area Manager also upheld the action stating that Smith was aware he was being disciplined for insubordination.

Smith's appeal to the OPC was based on the fact that the wrong infraction was cited on the Disciplinary Action Form. Smith listed several reasons to justify his refusal to follow his supervisor's directive. His justifications for disobedience were found to be without merit. The record clearly shows that Smith was insubordinate by the facts as well as his own admission.

There is no question of whether Martin cited the wrong infraction on the Disciplinary Action Form. Rather than V.D.2.1)a), insubordination (W/S/T), she listed V.D.2.4)a), threatening, attempting or doing bodily harm to another person (T). The Oneida Personnel Policies and Procedures (hereafter

“OPPP”) §V.D.5.b. clearly state “. . . the supervisor will fill out the five (5) part disciplinary action form stating the behavior for which the action is being taken, the time and date of its occurrence, and the *specific policy section* under which action is being taken.” [emphasis added]. Martin admitted her error but continued with the procedure explaining that Smith knew it was for insubordination. Although it may have seemed harmless to Martin, this error cannot be overlooked or excused. However, the OPC gave more weight to the incorrect citation than the act of insubordination.

The real issue is in balancing admitted insubordination against the admitted error in processing the disciplinary action. This Court finds both parties to be responsible for their actions in this matter. Smith was insubordinate, an act subject to discipline. Martin is required to correctly cite the specific policy section when disciplining a subordinate. Under the OPPP, insubordination is a Work Performance matter and threatening behavior is a Personal Actions and Appearance issue. Citing a violation with more severe consequences (termination), but simply issuing a written warning does not obviate the consequence of erroneous citation.

#### CONCLUSION

The Decision of the OPC is affirmed in part, reversed in part, and modified pursuant to §805.13-1 (a) and (b) (1)(3)(4) and (5).

This Court finds that it is necessary to cite the correct infraction on a Disciplinary Action Form. The fact that the employee “knew” he was being disciplined for insubordination rather than threatening bodily harm does not absolve the error by Martin. The Disciplinary Action Form should have accurately recited the appropriate infraction for which Smith was being disciplined. This error by Martin cannot be overlooked. Thus, we AFFIRM the OPC’s finding that Martin failed to properly cite the correct infraction.

The decision of the OPC to overturn the discipline against Smith is hereby REVERSED. This Court finds that Smith was insubordinate by his own admission and therefore it is an actionable violation of the OPPP and that the sanction of a written warning was appropriate. Such admitted insubordination cannot be overlooked or minimized by the failure of a supervisor to cite the correct citation. The OPC erred in overturning the disciplinary action against Smith.

Further, we MODIFY the OPC decision and direct that Smith's personnel record show the actual disciplinary infraction of V.D.2.1)a) Insubordination, as a written warning with the original date the discipline was issued, November 18, 2017.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, the decision of the Oneida Personnel Commission is **AFFIRMED IN PART, REVERSED IN PART** and **MODIFIED**. Dated this 28th day of September 2018, in the matter of Case No. 18-AC-003, *Roberta Martin, Slots Department, v. Garon Smith*.

*It is so ordered.*