

Oneida Tribal Judicial System

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APPELLATE COURT

Mari Kriescher
Supervisor, Oneida Behavioral Health
Appellant

Docket No. 12-AC-010

vs.

Evangeline Suquet
AODA Counselor,
Respondent

Date: October 23, 2012

FINAL DECISION

This case has come before the Oneida Tribal Judicial System Appellate Court; Judicial Officers Winnifred L. Thomas, Janice L. McLester, Lois Powless, Jennifer Webster, and Stanley R. Webster presiding.

I. Background

This case is an appeal of the Oneida Personnel Commission's decision ruling in favor of Ms. Suquet, citing Sec. IV.D.3.a.1 of the Oneida Personnel Policies and Procedures; leaves of absence must be signed by the supervisor, Area Manager, Human Resources Department Manager, and General Manager.

A. Jurisdiction

This case was accepted in accordance with the Oneida Administrative Procedures Act, 1.1-1. Authority. The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction to enforce this act as well as the responsibility as a government to protect the health, safety, welfare, and economy of the Oneida Reservation lands and all persons who either reside on the reservation or who are visitors and/or are conducting business within the exterior boundaries of the

reservation. The Oneida Tribe shall ensure due process of law for the designated citizens through adoption of this act, pursuant to Article VI of the Oneida Tribal Constitution, as amended.

B. Factual Background

Ms. Suquet is a Substance Abuse Counselor In -Training, working for the Oneida Medical Department at the Oneida Behavioral Health Department of the Oneida Comprehensive Health Division.

Ms. Kriescher is Ms. Suquet's supervisor. Ms. Kriescher stated she had received letters of complaints regarding Ms. Suquet's abuse of alcohol while in the community. The complaints were received by Ms. Kriescher's staff members as confidential communications. The complaints received also included demands by clients to be switched to another provider.

Ms. Kriescher judged them sufficient to merit action and disciplinary action. Ms. Kriescher, contacted the Personnel Relations Officer Mathew J. Denny to consult on a possible suspension of Ms. Suquet. Through the conversation with Mr. Denny, Ms. Kriescher determined that the issue was related to a potential medical/AODA issues. Ms. Kriescher stated that she was concerned for Ms. Suquet's best interest and thought it would be better to place Ms. Suquet on medical leave and have her sent out for an evaluation. Ms. Kriescher initiated a leave for Ms. Suquet to alleviate the financial burden of being off work until she could get an assessment completed. Ms. Kriescher placed Ms. Suquet in "Maternity, Medical or Family Medical" leave from December 21, 2011 to January 3, 2012 for reasons "Due to the best interest of the Tribe".

The requirement imposed on Ms. Suquet in order to return to work was to complete an AODA assessment and follow through with all treatment recommendations.

Ms. Kriescher determined that the complaints were valid yet they had not been substantiated through an investigation, however she placed Ms. Suquet in a leave of absence status rather than issue a discipline.

There were no dates indicated as to when Ms. Suquet was seen in the alleged condition. However the requirement imposed on Ms. Suquet in order to return to work was to complete an AODA assessment and follow through with all treatment recommendations.

After one appointment with the therapist, the counselor recommended that Ms. Suquet return to work but due to concerns of her use of alcohol, that she be "shadowed" by another counselor until more confidence could be gained. Ms. Suquet was puzzled by this recommendation because it seemed to be based on little or no actual assessment or facts. Ms. Kriescher received this recommendation from Ms. Suquet's AODA counselor on January 3, 2012.

On that same day, Ms. Kriescher decided to place Ms. Suquet on a second leave of absence in order to allow her to follow through with treatment recommendations. Ms. Suquet went through an alcohol and drug assessment and was off work until late February 2012.

The evidence from the original hearing suggests that Ms. Kriescher intentionally placed Ms. Suquet on leave rather than discipline because she believed it would be a more favorable situation for the employee. There would be no record of discipline and she would simply use her vacation time, if she wished, to be able to continue to be paid during the leave.

C. Applicable Rules / Laws

The Rule of Law used to place Ms. Suquet on leave was taken from the Oneida Personnel Policies and Procedures in section IV.D.3.a). A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Tribe.

Under Oneida Personnel Policies and Procedures Sec. IV.D.3.a).1).i. All leaves of absence must be approved by the supervisor, Area Manager, HRD Manager and General Manager.

C. Procedural Background

In December 2011, Ms. Kriescher received several complaints from clients of Oneida Behavioral Health Department, delivered to her by members of her staff. The complaints dealt specifically with Ms. Suquet's abuse of alcohol while in the community.

On December 21, 2011, Ms. Kriescher placed Ms. Suquet on a Leave of Absence from December 21, 2011 to January 3, 2012; The reason given "Due to the best interest of the Tribe".

January 3, 2012 the Supervisor, Ms. Kriescher placed Ms. Suquet on a second Leave of Absence in order to follow through with treatment recommendations.

On January 6, 2012 Ms. Suquet filed an appeal to the Area Manager, Dr. Ravinder Vir.

On January 16, 2012, the Area Manager responded to Ms. Suquet's appeal of January 6, 2012, supporting the supervisor Ms. Kriescher's decision to place her on leave.

On January 17, 2012, Ms. Suquet again filed an appeal with the Area Manager, Dr. Ravinder Vir, Medical Director of the Oneida Comprehensive Health Division stating additional concerns.

On January 30, 2012, the Area Manager responded to Ms. Suquet's second appeal dated January 17, 2012.

On February 8, 2012, the Oneida Personnel Commission granted Ms. Suquet a grievance hearing in accordance with the Oneida Personnel Policies and Procedures: Section V.D.6.b.1.a.b.

On March 13, 2012 the Oneida Personnel Commission overturned the leave of absence based on

procedural irregularities and ordered Ms. Suquet to receive back pay for lost vacation and personnel time while on leave.

II. Issues

Is an involuntary leave of absence an adverse employment action subject to grievance?

Do the missing signatures invalidate the Leave of Absence?

III. Analysis

Is an involuntary leave of absence an adverse employment action subject to grievance?

Yes, an involuntary leave of absence is an adverse employment action subject to grievance. Although there are no specific decisions where we have decided whether an involuntary leave of absence under Sec IV.D.3. of the Oneida Personnel Policies and Procedures is appealable as an adverse employment action, there are many other non-discipline situations for which we have allowed appeals.

In *Oneida Development Division v. Danforth*, 99-EP-0021, (1/6/2000) we allowed job re-assignment to be appealed. In *Hahnke v. White*, 09-AC-074 (4/20/2010), the employee alleged a retaliatory lay off. We permitted an appeal for finding whether the layoff was used in lieu of disciplinary action. In *Oneida Bingo & Casino v. Antone-Mann* 03-AC-017, (10/07/2003) we found that removing an employee from the work schedule which caused the employee to lose wages was subject to grievance.

Likewise, in this case, Ms. Suquet was placed on involuntary leave for several weeks and had to use vacation and personal time. Personal and vacation time are essentially like property of the employee as they will be paid out to the employee in money upon separation from employment. In Sec. IV.A.5.h. of the Oneida Personnel Policies and Procedures states, Vacation and personal time lost means less time off later or unpaid leave. It also means less payment upon separation. Loss of vacation time has a negative impact on the employee. Furthermore, to allow a supervisor

to place an employee on involuntary leave without recourse would provide all supervisors a loophole around the grievance process. Employees could be punished without review. This sort of result is inconsistent with the due process provided by the Oneida Personnel Policies and Procedures. Therefore, we find the involuntary leave of absence is an employment action subject to grievance.

In the case of *Oneida Bingo & Casino, Facilities Custodial Department vs. Jeffery Parker 04-AC-012 October 22, 2004*. Jeffery Parker, a first shift custodial worker in the Gaming Facilities Department, was terminated from employment for being a no call/no show for work of January 31, 2004, February 5, 2004, February 6, 2004, and February 20, 2004 and for accumulated disciplinary notices warranting termination.

In this case the Oneida Personnel Commission ruled "Although there was a conversation between the Respondent and the Appellant regarding a Leave of Absence, it falls to the employee to provide the necessary documents required to process the Leave of Absence request. The Oneida Tribe's Personnel Policies and Procedures indicate that supervisors are enjoined to use common sense, discretion and judicious good sense in resolving employee concerns. As part of his position responsibilities, the supervisor is to inform his employees of the requirements and confirm their understanding the process. Because the supervisor did not inform Mr. Parker of the procedures for requesting a leave of absence, and confirm with the employee of his understanding, the Personnel Commission ruled this absence to be covered under leave of absence." The Personnel Commission's decision further states "In accordance with the Personnel Policies and Procedure Manual, section V.D.2, the supervisor failed to initiate disciplinary action to correct unacceptable work performance with the Respondent. The Supervisor did not discuss the disciplinary action with the employee to ensure that he understood the reasons for the termination action. The Area Manager failed to conduct an investigation, relying solely on information received from the Respondent's supervisor."

In the instant case the employee, Ms. Suquet, did not request a Leave of Absence she was forced

to take leave. There had been no thorough investigation prior to forcing her to take leave and also given certain criteria to meet before she would be allowed to return to work.

The Oneida Personnel Policies and Procedures suggest that a leave of absence is a benefit to an employee as it discusses being “granted” for a “justifiable reason” and when in the best interest of the Tribe Sec. IV.D.3.a.

Do missing signatures invalidate the Leave of Absence?

Yes, missing signatures invalidate the Leave of Absence.

Ms. Kriescher states the leave of absence was made for the protection of the employee. Ms. Suquet disagrees. Ms. Kriescher, initially sought to discipline Ms. Suquet however after discussions with Matthew Denny, Personnel Relations Director she decided to place Ms. Suquet on a medical leave.

In placing Ms. Suquet on a Leave of Absence, there were procedural irregularities exhibited. The process for placing an individual on a Medical Leave of Absence is outlined in the Oneida Personnel Policies and Procedures in Section IV.D.3.a)1)i. All leaves of absence must be approved by the supervisor, Area Manager, HRD Manager and General Manager.

The Oneida Personnel Commission correctly determined Ms. Kriescher did not acquire all necessary approvals to place her on medical leave as evidenced through the hearing.

Ms. Kriescher, placed Ms. Suquet on a medical leave of absence in place of a discipline.

The leave of absence was only signed by Ms. Kriescher.

The Oneida Personnel Commission ruled in favor of Ms. Suquet because the Oneida Personnel

Policies and Procedures Sec. IV.D.3.a.1 states the leave of absence must be signed by the supervisor, Area Manager, HRD Manager and General Manager.

The evidence shows the Leave of Absence was only signed by Ms. Kriescher. The Area Manager, HRD Manager and General Manager did not sign. The Leave of Absence in this case did not contain all the required signatures.

The Oneida Personnel Commission's decision stated "It is the decision of this Commission that the Leave of Absence that was issued to the Petitioner was not performed within the scope of the Leave Of Absence policy by the Respondent, Mari Kriescher. In addition, the Human Resources personnel did not follow the proper procedures when they processed the Leave of Absence paperwork without the required signatures. Therefore, the Oneida Personnel Commission rules in favor of the Petitioner."

The leave of absence was only signed by Ms. Kriescher. The Area Manager, HRD Manager and General Manager did not sign. The Oneida Personnel Commission inferred that a lack of signatures meant a lack of approval. We are not aware of any evidence in the record that the leave was approved in writing or otherwise. Ms. Kriescher argues that the leave was done in consultation with HRD. Even if this was true, the Area Manager and General Manager approvals are also required.

This result is consistent with similar cases we have decided previously. In *Denny v. Oneida Head Start, 97-EP-0024, (3/26/1998)*, the employee appealed her reassignment to a different job under Sec. III.C.a.2. Oneida Personnel Policies and Procedures. That section requires approval by the Personnel Evaluation Committee when an employee is re-assigned to a different job. No such approval was obtained. Shortly after reassignment, the employee was terminated. In part because the reassignment was not properly approved, the termination was reversed.

Likewise, employee disciplines for missing work or changing a schedule without supervisor

approval are upheld without much discussion. For example, in *Hill v. Wallenfang*, 09-AC-018, (12/21/2009), the employee's termination under Sec. V.D.2.II.a. was upheld for her failure to report and observe work schedules without the approval of her supervisor. Equally supportive is *Huff v. Oneida Bingo & Casino*, 10-AC-018, (2/15/2011).

The lack of approvals are more than just a technicality, especially here where the leave was involuntary and the supervisor states she was trying to benefit the employee by avoiding discipline, but still causing the employee to suffer the punishment of losing vacation and personal time. Review and approval by others serves as a check to prevent potential problems with this type of leave.

The Oneida Personnel Commission overturned the leave of absence based on procedural irregularities and ordered Ms. Suquet to receive back pay for lost vacation and personnel time while on leave.

IV. Decision

This Appellate Court affirms the Oneida Personnel Commission's decision overturning the involuntary leave of absence.

IT IS SO ORDERED