

Oneida Tribal Judicial System

Onayote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

APPELLATE COURT

Tenielle Johnson,
Appellant

Docket # 12-AC-011

v.

Debbie Danforth
Respondent

Date: October 9, 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, Stanley R. Webster, presiding.

Background

This case is an appeal of the Oneida Personnel Commission's Initial Review Hearing Panel's decision dated March 27, 2012.

A letter of Complaint was filed with Debbie Danforth, Comprehensive Health Division Operations Director, against Dr. William Stempski. The complaint is concerning an incident on January 12, 2012 between Ms. Johnson and Dr. William Stempski.

In January, 2012, Tenielle Johnson, a Dental Supervisor at the Oneida Health Center, asserts she had a confrontation with her supervisor, Dr. William Stempski, during which Dr. Stempski yelled and came close into her physical space in a threatening manner.

Ms. Johnson asserts, she was so traumatized by this incident that she immediately left the work place. After consulting with various tribal resources, she filed a complaint against Dr. Stempski with Debbie Danforth the Director of the Oneida Health Center.

Ms. Danforth investigated and found a lack of support for Ms. Johnson's claims. Ms. Danforth wrote to Ms. Johnson on February 17, 2012 sharing her results and informing Ms. Johnson that she would not be taking further action.

On March 22, 2012, Ms. Johnson filed paperwork with the Oneida Personnel Commission "appealing" Ms. Danforth's February 17, 2012 letter and findings. The Oneida Personnel Commission dismissed on March 27, 2012 stating that complaints under Sec. V.D.1. of the Oneida Personnel Policies are not appealable. Sec. V.D.1.d. states: "There is no further appeal of this process."

Ms. Johnson remained on leave of absence, facing a return to work date of April 12, 2012, she decided to resign rather than continue to work with Dr. Stempski.

A. Jurisdiction

This case was accepted in accordance with the Oneida Administrative 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

On January 12, 2012 there was an alleged altercation between Dr. William Stempski and Ms. Johnson during which Dr. Stempski yelled and came into Ms. Johnson's physical space in a

threatening manner.

On January 13, 2012, Ms. Johnson presented a written complaint to Ms. Debbie Danforth stating she did not feel comfortable returning to the department and Ms. Danforth instructed her to complete a Leave of Absence form.

On February 7, 2012, Ms. Johnson submitted a letter to Ms. Danforth inquiring about leave of absence, FMLA (Family Medical Leave Act), workman's compensation, and status of the investigation.

On February 24, 2012, Ms. Johnson received a response to one of her complaints from Ms. Danforth. In the letter Ms. Johnson received from Ms. Danforth she was told there was no appeal process for complaints.

On March 22, 2012, Ms. Johnson filed her complaint to the Oneida Personnel Commission.

On March 27, 2012, the Oneida Personnel Commission rendered their decision, which stated in their conclusion "Complaints are not within the scope of authority for the Oneida Personnel Commission to address."

C. Procedural Background

Oneida Personnel Policies and Procedures; V.D. 1. Complaints

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

The Oneida Personnel Commission is bound by the Oneida Personnel Policies and Procedures

Manual in regard to intake procedures and can only accept under certain criteria in procedural irregularities. *Oneida Personnel Policies Procedures Section 5. D. 6. b.1) a) The decision of the Area Manager is clearly against the weight of the evidence and/or b) Procedural irregularities were exhibited during the appeal process that may have been harmful to one of the parties to the grievance.*

Ms. Johnson's complaint does not fall into either one.

Issues

Does Ms. Johnson have the right to appeal Ms. Danforth's February 17, 2012, letter?

Was there an adverse employee action subject to appeal?

Analysis

Does Ms. Johnson have the right to appeal Ms. Danforth's February 17, 2012, letter?

The Oneida Personnel Policies and Procedures do not provide an appeal process for complaints Ms. Johnson has not presented a legal basis for the filing of her complaint. The Oneida Personnel Policies and Procedures are very clear: *Section V.D.1. Complaints: a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor. b. The supervisor will investigate the complaint and attempt to resolve the disagreement. c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution. d. There is no further appeal of this process.* The complaint process ends at the Area Manager's level.

Ms. Johnson was not disciplined nor was she terminated. Ms. Johnson was granted a medical leave, at the end of which she chose to resign.

Was there an adverse employment action subject to appeal?

No, this was not an adverse employment action subject to appeal.

Ms. Johnson was not disciplined or terminated. Furthermore, even if there was an adverse employment action and Ms. Johnson's submission was treated as a grievance, it was not timely filed. Section V.D.6.b. of the Oneida Personnel Policies and Procedures states "The appeal must be filed with the Area Manager and the Oneida Human Resources Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action."

Ms. Johnson admitted she received Ms. Danforth's letter on February 24, 2012. Ten working days after February 24, was March 9, 2012. Ms. Johnson filed her case with the Oneida Personnel Commission on March 22, 2012, the case was filed untimely.

Decision

This Complaint is dismissed.

IT IS SO ORDERED