

Oneida Tribal Judicial System

Onayote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

Appellate Court

Crystal Cornelius,
Appellant

Docket No. 12-AC-019

vs.

Date: February 14, 2013

Oneida HRD-Benefits
Crawford Insurance,
Respondent

Final Decision

This case has come before the Oneida Tribal Judicial System, Appellate Court Judicial Officers Winnifred L. Thomas, Carole Liggins (Pro-tem), Janice L. McLester, Jennifer Webster and Stanley R. Webster presiding.

I. Background

This is an appeal of the Oneida Tribal Judicial System Trial Court's decision dated August 13, 2012. The Trial Court denied Crystal Cornelius her claim for benefits from Crawford & Company Insurance.

The Appellant, Crystal Cornelius, worked as a dispatcher for Oneida Transit in a building located on Ranch Road in Oneida.

Appellant, presented evidence showing that not only the Appellant but other workers within that building suffered from increased or new sinus infections, respiratory issues, and other detrimental health effects while working in the building. These symptoms were not alleviated until all workers were removed from the building and relocated.

Appellant argues the Trial Court's decision was clearly erroneous because it misapplied the standard of review and burden of proof where the great weight of evidence presented would leave a court to conclude that the most likely cause of the Appellant's injury was the working conditions she was in with co-workers.

The Appellate Court is persuaded by the preponderance of evidence presented at the Trial Court which is the applicable burden of proof in this matter, and overturns the Trial Court's decision.

Jurisdiction

This case was accepted in accordance with the Oneida Administrative Procedures Act, 1.1-1. and the Oneida Tribal Judicial System Appellate Court, Rules of Appellate Procedures. The Initial Review Body shall accept an appeal when an Appellant alleges with sufficient clarity that the Original Hearing Body decision contains one or more of the following elements:

A violation of constitutional provisions.

The decision is outside the scope of the authority or otherwise unlawful.

The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level.

The decision is arbitrary and/or capricious.

There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision, which if the error had not occurred, would have altered the final decision.

There is presentation or introduction of new evidence that was not available at the hearing level, which, if available, may have altered the final decision.

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.

This Appellate Panel finds Appellant alleged with sufficient clarity the element: The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level.

Factual Background

Appellant, Ms. Cornelius, was a dispatcher for Oneida Transit department. Oneida Transit department was located at 1138 Ranch Road, Oneida WI. The Oneida Transit department relocated to the Ridgeview Plaza where they remain today.

Appellant, filed for injuries suffered while working over the course of time in the year 2011. The alleged injuries suffered were repeated sinus infections and respiratory issues that culminated with an episode that led to hospitalization in December of 2011. Upon her release from the hospital it was suggested that mold exposure may be the cause of her symptoms and was advised to see an allergist.

Appellant was hospitalized in December of 2011 and upon her discharge from the hospital began the inquiry and investigation into whether her repeated illnesses were related to working conditions found in the building and if those conditions caused the illnesses of not only her but other employees that worked in the building. Appellant filed an incident report and began the worker's compensation process immediately upon discharge from the hospital. In March 2011, Appellant was referred to an allergist.

Allergic testing of the Appellant has shown a high likelihood of reaction to dust mites and mold that may have existed in the building on Ranch Road, and it is this working condition that is at issue before the court.

Her claim was rejected by Respondent, Crawford & Company Insurance, on the grounds that it

was untimely, because the Appellant claimed she had flu like system and sinus infections from the beginning of January 2011, through December 2011.

Appellant filed her complaint on January 2012 appealing the denial of her workers compensation claim. Allergic testing of the Appellant has substantiated she had a reaction to dust mites and mold that may have existed in the building on Ranch Road, and it is this working condition that is at issue before the court.

The Oneida Tribal Judicial System Trial Court, permitted the claim to proceed based upon the testimony of notice, finding that the Appellant only had notice that working conditions likely caused her injuries after the hospitalization, and then heard testimony on two trial dates, May 4, 2012 and July 9, 2012.

The Oneida Tribal Judicial System's Trial Court issued their decision to deny benefits to the Appellant on August 13, 2012.

Procedural Background

On January 26, 2012 Ms. Cornelius filed her complaint alleging she suffered from reoccurring sinus infections since January of 2011.

On December 7, 2011 Ms. Cornelius went to St. Vincent Hospital complaining of chest pain and difficulty breathing. Ms. Cornelius underwent cardiac catheterization surgery. She was discharged on December 12, 2011.

On December 13, 2011 Ms. Cornelius filed an Injury/Medical Report Form claiming she suffered from a sinus infection, shortness of breath, and flu like symptoms which was caused by mold exposure stemming from her place of employment.

On January 6, 2012 Crawford & Company Insurance denied her claim because Ms. Cornelius

failed to report her illness within 48 hours in accordance with Oneida Worker's Compensation Law § 13.9-1.

Crawford & Company Insurance denied her claim alleging Ms. Cornelius informed Crawford & Company Insurance that her symptoms first appeared in January 2011 and she did not report the illness until December of 2011.

On March 6, 2012 a pre-trial was held, the Court issued a Scheduling Order. The parties agreed to argue the following issue: Is Petitioner's claim covered and eligible for benefits under the Oneida Worker's Compensation Law?

On May 4, 2012, the trial began and was continued to June 22, 2012. The last deliberation was held on August 3, 2012.

On August 13, 2012 the Oneida Tribal Judicial System's Trial Court rendered their decision to deny Ms. Cornelius' appeal and uphold Crawford & Company Insurance's decision to deny her benefits.

II. Issues

Was the decision of the Trial Court clearly erroneous and against the weight of the evidence presented at the hearing level?

III. Analysis

Yes, the decision of the Oneida Tribal Judicial System's Trial Court was clearly erroneous and is against the weight of the evidence presented at the hearing level.

The Trial Court's decision stated the Oneida Worker's Compensation Law § 13.9-1 Notice of Injury states, no compensation shall be due under this law unless, the employee or another on behalf of the employee, reports the injury within 48 hours of accident causing the injury.

In the evidence presented at trial Ms. Cornelius was dismissed from the hospital on December 12, 2011 having been hospitalized for five days. The suggestion was given that mold exposure may be causing her symptoms and that she should see an allergist, which she did. At that time, December 13, 2011, (she was released from the hospital on the 12th and filed on the 13th which was Monday) Ms. Cornelius filed for Worker's Compensation the day after she had been released from the hospital.

Ms. Cornelius claims that her exposure to mold at her workplace caused her to be hospitalized in December of 2011 and that this injury entitles her to benefits under the Oneida Worker's Compensation Law.

Applicable Law

In the instant case the Trial Court based their decision on the Oneida Worker's Compensation Law § 13.9-1. *Notice of the Injury. No compensation shall be due under this law unless, the employee, or another on behalf of the employee, reports the injury to the employee's supervisor, manager or the employers designated representative within 48 hours of the accident causing the injury. No compensation or medical benefits will be paid if a written notice of injury is not given to the employer within 10 calendar days of the date the employee first reports the injury. If the injury incapacitates the employee, the 10 day time limitations will not begin until the incapacity ends. A repetitive traumatic injury is deemed to have occurred when the employee knows or has reason to know that the injury caused the employee to be unable to work, whichever occurs first.*

The Trial Court cited Chapter 13.3-9. *Burden and Standard of Proof. Except where explicitly stated otherwise, the burden of proof is on the party advancing a particular claim or defense, and the standard of proof is by a preponderance or greater weight of the evidence.*

The preponderance of the evidence in this case has persuaded this Appellate Court that it is more likely to be true that Ms. Cornelius' work site caused her to suffer from repeated sinus infections

and health issues that led to the filing of this case. While the Trial Court substantiated the fact there was indeed mold present in the Oneida Transit building through the pictures of the growth of plants growing out of a window sill; water intrusion in the ceiling tiles and mold growing in the gypsum wall corner and the employees testimonies, there was no insistence for a report or a sampling of the mold to be inspected to ascertain if the mold had caused the health problems suffered by the employees that worked in the building. Ms. Cornelius requested those findings so that her physician could test for a specific mold in the building where she worked that may have caused her illnesses. She was denied that information on 4/2/2012, when she received an e-mail from Mr. Mears of the Environmental Department that stated "We have been advised by the Oneida Law Office not to release any reports related to Oneida Transit."

Despite the preponderance of the evidence presented the Trial Court neglected to look closely at Chapter 13 Section 13.3-12. *Covered Injury/Accidents. Mental or physical harm to an employee caused by accident or disease and arising out of and in the course of employment. Injury includes mental harm or emotional stress or strain without physical trauma, which arises from exposure to conditions or circumstances beyond those common to occupational and/or non-occupational life and is predominantly work related, extraordinary and unusual.*

The Trial Court cited to not only Chapter 13.3-12 but also 13.3-9 *Burden of Standard of Proof*. "Except where explicitly stated otherwise, the burden of proof is on the party advancing a particular claim or defense, and the standard of proof is by a preponderance or greater weight of the evidence."

While the Trial Court concludes in their decision "There is no evidence connecting the mold at the workplace to her health issues in December, 2011. Dr. Mjannes's testimony seemed to be on the verge of doing so, but without the test results of the mold at the workplace, he could not connect the cause and effect. The medical summary report listed four diagnosis and mold or sinus infection was not among the list." However without the explicit evidence to the contrary, a sampling of the mold or report, would have unveiled the evidence needed.

When Ms. Cornelius was asked, in the May 4, 2012 hearing; "In 2009 when you began had you had a history of sinus infections or frequent flu's before working there?" Her answer was "No".

As referenced in the transcripts, in the year of 2011 the Appellant and her co-workers all began to suffer from sinus infections and other respiratory illnesses and no one knew why. Some of the employees speculated that mold and dampness within the building might be a factor. There was no investigation into the possibilities that the building may have contributed to the health problems sustained by these employees.

While the Trial Court acknowledged the mold within the building and the symptoms suffered by the appellant and her co-workers, they ruled against the Appellant because there was no direct evidence that the mold or work environment caused the Appellant's admission to the hospital.

The only medical witness that testified the mold was most likely the result and cause of the Appellant's admission to the hospital, was Dr. Christopher M. Mjaanes MD Asthma/Allergy specialist.

Dr. Mjaanes testified "there's a difference between a mold allergy and the toxic effects of mold." He further stated for the record that after a series of tests he confirmed Ms. Cornelius suffered from dust mite allergies and did suspect that she also may have had some mycotoxins contributing to her symptoms. Mycotoxins were explained by Dr. Mjaanes as a protein or spores that are released from the fungi or mold.

Dr. Mjaanes requested a sample of the mold so he could test Ms. Cornelius to substantiate if it had been the mold that was causing her health problems. He did not receive any sampling or report of the type of mold contained in the building where Ms. Cornelius worked.

Ms. Cornelius presented medical evidence of adverse reaction to the mold and/or dust mites

within the building such that in December 2011, she was admitted to the hospital with a possible cardiac issue. She did not have a cardiac event. Ms. Cornelius underwent a cardiac catheterization because she presented cardiac symptoms.

Ms. Cornelius stated through testimony when asked about the examination of her heart and the catheterization of the arteries what happened to make her stay so long at the hospital. She told the court "They go in take x-rays, they go through your heart, and check all your valves make sure everything is open. And how they close it is an angio seal and that's what ruptured." So as a result of the ruptured angio seal the hospital stay was longer and her return to work was extended by about 3 weeks.

At the time of her release from the hospital Ms. Cornelius filed for Worker's Compensation.

In the hearing, Ms. Cornelius was asked if she had been tested for allergies or more specifically mold or allergic reaction to mold. She replied in the affirmative. She had gone to see Dr. Flood and he referred her to a specialist, allergy, sinus specialist, Dr. Mjaanes.

Through testimony it was substantiated that Ms. Cornelius had been suffering an allergic reaction to mold/dust mites within the building, and it was the allergist that determined that she was exposed through her place of work.

As evidenced from the court records, Petitioner's Exhibit #1 is a letter sent from Dr. Mjaanes M.D. that he was awaiting the results of mold specimen, a sample of the mold to be tested. The Tribe refused additional sampling to aid in a conclusive determination as to mold reactions. The witnesses presented at the hearing all agreed that they all had suffered the same symptoms throughout the year and when the Transit Department was moved to a new location the symptoms ceased.

In the case of *Oneida Human Resources Department, Crawford & Company vs. Doris Smith*

(Deceased), David Smith (Surviving Spouse) and Special Administrator of the Estate of Doris Smith, Docket No. 06-AC-024 the court stated “This case is one of first impression and requires us to construe Section 13.6-1 of the Worker’s Compensation Ordinance. That section states in relevant part: *Employer’s Liabilities: With respect to any employee who sustains injury or death arising out of and in the course of employment with the employer, such employer shall be liable for the payment of compensation to such employee, the employee’s surviving spouse or children or personal representative, as provided in this law. We must determine whether Ms. Smith’s injury and death meet the standard described for compensability.*”

The definition of “Arising out of and in the course of employment” Black’s law Dictionary, states “Workers’ compensation act provide for compensating an employee whose injury is one ‘arising out of and in the course of employment.’ These words describe an injury directly and naturally resulting in a risk reasonable incident to the employment. They mean that there must be some causal connection between the conditions under which the employee worked and the injury, while “course of employment” refers to the time, place, and circumstances of employment if it arises out of nature, conditions, obligations and incidents of the employment.

By the preponderance of the evidence presented, Ms. Cornelius worked in a mold infested building which resulted in her injury/illness. We agree with the Appellant’s argument that the condition which existed inside the employer’s premises and was in the course of and arose out of Ms. Cornelius’s employment caused her illness.

We reject the argument that compensation should be denied because Ms. Cornelius filed untimely. When Ms. Cornelius was in the hospital, she was alerted to the fact that her health issues were related to mold/dust mites. Upon her release from the hospital she filed for Worker’s Compensation under Chapter 13 13.9-1 Notice of the Injury. She was within the 48 hours of the accident causing the injury. In this case when she found out it was the mold that may have caused her illness/injury she filed within the time instructed.

We also reject the argument that compensation should be denied because Ms. Cornelius' health issue did not fall within the meaning of the term injury as defined in Section 13.3-5

That section states: *Injury or personal injury. Physical or mental harm to an employee caused by accident or disease which arises from exposure to conditions or circumstances beyond those common to occupational and/or non-occupational life and is predominantly work related.*

The Court finds Ms. Cornelius has suffered loss of time at work and numerous doctor visits due to her sinus infections caused by her work place conditions. The medical evidence through doctor notes and testimony support this conclusion. The mere fact that all the employees that worked in that same building became ill and suffered respiratory issues throughout 2011 to various degrees is by far the most direct evidence presented. The most resounding evidence of all is the fact that since the Transit Department moved from the building on Ranch Road to the present location, no one has had a reoccurrence of the symptoms that they all experienced at the Ranch Road location. There was a reduction or elimination of such symptoms when they were relocated to a safe environment.

This Appellate Body is persuaded by the preponderance of the evidence that the environment in which Ms. Cornelius worked caused the health issues and led to her hospitalization. The employee has a right to work in a safe and healthy environment. The employer has a responsibility to ensure a safe and healthy work place environment. *Chapter 13 Oneida Worker's Compensation Law states: 13.1-1-2. It is the policy of the Oneida Tribe to protect the employees of the Oneida Tribe and over which the Oneida Tribe extends its jurisdiction.*

The Oneida Tribal Judicial System's Trial Court erred when it failed to examine all the evidence and the preponderance of the evidence surrounding this case. The obvious mold on walls and mold plants growing in window sills of the building should have made anyone/someone suspicious and should have caused the Trial Court to order tests and reporting on the toxins in that building.

When the employer defaults on their responsibility to ensure a safe working environment for their employees it is up to the court to bring up relevant evidence in their fact findings to protect the work force. When this does not happen the Appellate Court must review and interpret the record.

IV. Decision

This Appellate Court finds in favor of the Appellant, Ms. Cornelius, and overturns the decision of the Trial Court.

This Appellate Court grants the Appellant, Ms. Cornelius, benefits from February 2011 through December 2011, as related to her claim, for her medical bills for Oneida Health Center, Prevea Health, St. Vincent's Hospital, personal and vacation time, as well as the donated hours she received while recovering from her hospital stay.

IT IS SO ORDERED