

# ***Oneida Tribal Judicial System***

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## **TRIAL COURT**

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**Crystal Cornelius,  
Petitioner,**

**Docket No: 12-TC-003**

**v.**

**Date: August 13, 2012**

**Oneida HRD-Benefits and  
Crawford & Company,  
Respondents**

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## **DECISION**

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This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, Jean M. Webster, and Leland Wigg-Ninham, presiding.

### **I Background**

This case involves a Worker's Compensation claim by Petitioner, Crystal Cornelius. Ms. Cornelius claims that her exposure to mold at her workplace caused her to be hospitalized in December, 2011 and that this injury entitles her to benefits under the Oneida Workers Compensation Ordinance. We do not have sufficient evidence before us to establish that the exposure to mold caused Ms. Cornelius' hospitalization. Therefore, we deny the claim and uphold the denial of benefits.

A brief procedural summary is provided before we turn to the merits of the claim. On January 26, 2012, Petitioner filed her complaint alleging she suffered from sinus infections since January 2011.

On December 7, 2011 Petitioner went to St. Vincent Hospital complaining of chest pain and difficulty breathing. Petitioner underwent cardiac catheterization surgery. She was discharged on December 12, 2012.

On December 8, 2011 Petitioner 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. Respondents denied her claim alleging Petitioner informed Respondents that her symptoms first appeared in January 2011 and she did not report the illness until December 2011. Respondents assert Petitioner failed to report her illness within 48 hours in accordance with Oneida Worker's Compensation Law § 13.9-1.

On January 6, 2012 Crawford & Co. Insurance denied Petitioner Worker's Compensation benefits.

On March 6, 2012 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 transcripts from the final hearing were received on July 16, 2012. The last deliberation was held on August 3, 2012.

## **II Issue**

Is Petitioner's claim covered by the Oneida Worker's Compensation Law?

## **III Analysis**

### *Petitioner's arguments*

Petitioner is seeking Workman's Compensation benefits 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.

Petitioner claims she has worked as a second shift dispatcher since 2009 at the Ranch Road location. Petitioner asserts her first treatment for sinus infection was mid-February 2011. Petitioner alleges her symptoms progressively got worse which included sinus infections, nausea, headaches, difficulty breathing, and chest pains.

Petitioner's doctor, Dr. Christopher M. Mjaanes MD Asthma/Allergy specialist, testified that after a series of test he confirmed Ms. Cornelius was exposed to mold and as a result suffered several sinus infections. Dr. Mjannes could not confirm if the mold she was exposed to is the same mold in her workplace because Petitioner was unable to get samples from her workplace to compare with the ones tested at the clinic. Dr. Mjannes stated,

“Even short of a specific mold allergy, patients with underlying allergic disease are at greater risk of suffering from the adverse effects of mycotoxins released by environmental molds. Upper and lower respiratory system complaints experienced by the patient during her heavy mold exposure were likely a result of the effects of these mycotoxin that are being inhaled on a regular basis. This is consistent with the fact that once the patient was removed from these situations the sign/symptoms resolved promptly. This also is consistent with the fact that now that she has been out of that situation for two and a half to three months she's not had any return of her symptoms.

#### *Respondent's arguments*

Respondents claim their denial was based on Petitioner's doctor visits on December 14, 2011 and December 26, 2011 from Dr. John D. Hutto and Dr. Charles W. Saletta with Prevea Health that noted on the Practitioner's Return to Work Recommendations Record that this was not a work related injury. In addition, nothing in the medical records indicate that Ms. Cornelius' illness was caused by or related to mold exposure. Crawford & Company Representative, Betty Jaffer, sent a letter to Prevea Health requesting medical records concerning Ms. Cornelius' treatment for mold. On January 23, 2012, Debra T., ROI Specialist with Prevea Health, sent a letter to Ms. Jaffer indicating that “we cannot honor this request because we do not have records regarding mold for the dates you requested.” Therefore, on January 6, 2012, Respondents denied Workers Compensation benefits to Ms. Cornelius.

In addition, Respondents base their denial on Oneida Worker's Compensation Law § 13.9-1, that 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. Ms. Cornelius informed Respondents that symptoms first appeared in January 2011, however, she did not report the illness until December 2011, almost a full year after the symptoms began. Since Ms. Cornelius failed to report the accident with 48 hours, her is not compensable under § 13.9-1. Further there is no evidence to show the illness was work related.

*Court's findings of fact*

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

Ms. Cornelius was admitted to St. Vincent Hospital on December 7, 2011 and discharged December 12, 2011. The discharge summary diagnoses included the following:

1. Chest pain.
2. Right groin hematoma following cardiac catheterization. Patient was subsequently brought to the cath lab and underwent a cardiac catheterization and post-cardiac catheterization, Angio-Seal was deployed. It was successful deployment. The patient was subsequently sent to short stay without any event.
3. Diabetes.
4. Morbid obesity.

Several of Petitioner's witnesses testified to feeling symptoms of allergies and flu which progressively got worse until their department relocated. They testified that black mold was seen growing in the corner of the ceiling of their office and that a plant was growing out of the window ceil. Petitioner's supervisor, Brandon Cooper, instructed his employees to evacuate the building due to leaky roof. He also began to suffer sinus problems shortly after working in building. Mr. Cooper stated he smelled what he believed to be mold. He requested a report to see if mold was present in building.

The report was dated November 03, 2011. The report concluded that the Oneida Transit building located on Ranch Road was inclusive of mold. The report stated *the humidity levels less than 30% cause some people respiratory discomfort while levels over 60% promote the growth of some forms of mold and mildew.* Table II of the report shows the temperature of the Transit building west interior at 71.6 and the east interior at 72.7. The report included three pictures; 1) the growth of plants growing out of a window ceil, 2) water intrusion in a ceiling tile, and 3) mold growing in the gypsum wall corner.

According to 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."

#### *Court's conclusions of law*

While there may be no doubt that mold was present at the Ranch Road location and that Petitioner suffered sinus infections as a result of her mold exposure, Petitioner failed to provide evidence that her hospital stay was a direct result of mold exposure. 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.

This situation is unique; unlike a typical injury or accident when someone falls and suffers an injury, Petitioner claims this type of injury starts out weak and progressively got stronger due to her exposure to mold. There is not any serious doubt mold was present in the Oneida Transit building: the pictures are proof and the employees, including Brandon Cooper, stated they smelled mold in the building. Ms. Cornelius requested a follow up report as to what was determined to be in that building so that she is able to give those finding to her physician and get continued testing. She was denied that information. According to the email from Jeff Mears to Crystal Cornelius dated

#### **IV Decision**

Petitioner's appeal is denied. Respondent's decision to deny benefits is upheld.