

# ***Oneida Tribal Judicial System***

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## **APPELLATE COURT**

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Connie Cornelius,  
Appellant

Docket No. 13-AC-017

v.

Date: June 6, 2014

Lambert Metoxen,  
Oneida Bingo Casino,  
Respondents.

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## **DECISION**

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This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers, Carole Liggins (Pro Tem), Robert Miller (Pro Tem), Lois Powless, James Van Stippen (Pro Tem) and Stanley R. Webster presiding.

### **I. Background**

This case arises out of Appellant Connie Cornelius' termination from employment as a Pit Manager at the Oneida Bingo Casino. Ms. Cornelius accumulated three upheld disciplinary actions within a 12-month period. She appealed to the Personnel Commission which upheld the termination after a hearing. We affirm the Oneida Personnel Commission's decision and uphold the termination.

*A. Jurisdiction*

This case comes to us as an appeal of an original hearing body decision issued by the Oneida Personnel Commission. Any person aggrieved by a final decision in a contested case can seek Oneida Tribal Judicial System review under Sec. 1.11-1 of the Oneida Administrative Procedures Act.

*B. Factual Background*

Ms. Cornelius worked as a Pit Manager at the Oneida Bingo Casino. Although not explicitly discussed, a Pit Manager's job appears to be to oversee and take responsibility for activity in the gaming pits. Gaming pits are where table games such as black jack and baccarat are located. By the statements of both parties, three of the important responsibilities of a Pit Manager are: 1) the safekeeping of the tens of thousands of dollars' worth of gaming cheques (often referred to by the public as chips) that are in the pit; 2) ensuring the integrity of the gaming; and 3) customer service.

The Court will review the incidents which led to Ms. Cornelius' termination from employment. On February 14, 2013, Ms. Cornelius received a written warning for various exception reports and procedural infractions between June 2012 and February 2013. The exception reports and procedural infractions concerned things like miscounting or misreporting the number of cheques when closing a table. When gaming at a table is finished, all of the cheques are counted and recorded. For example, on November 29, 2012, Ms. Cornelius signed that there was \$5,425 worth of \$25 cheques when in fact the amount was actually \$4,925. It appears the parties agree that the errors were in violation of casino rules but that no assets were lost as a result. The written warning was not appealed.

On August 21, 2013, Ms. Cornelius was given a 2-day suspension for failing to discipline a dealer (Ms. Cornelius' subordinates) for an alleged infraction in how the cards were dealt. Ms. Cornelius appealed the suspension to her Area Manager who upheld the discipline.

On September 18, 2013, Ms. Cornelius was issued a written warning after she embarrassed subordinates in front of members of the public. The written warning was also appealed to the Area Manager who upheld the discipline on October 8, 2013.

On October 22, 2013 Ms. Cornelius was terminated from employment pursuant to Sec. V.D.3.c of the Tribe's Personnel Policies and Procedures (also known as the Blue Book) which permits an employee to be terminated upon the accumulation of three upheld disciplinary actions within a 12-month period.

### *C. Procedural Background*

On October 24, 2013, Ms. Cornelius timely appealed her termination to the Area Manager. The Area Manager upheld the termination on October 26, 2013.

Ms. Cornelius timely appealed to the Oneida Personnel Commission (OPC) on November 1, 2013. A grievance hearing was held on December 4, 2013 and a decision by the Personnel Commission upholding the termination was issued the same day.

In its decision, the OPC addressed three issues raised by the Petitioner: 1) that one of the infractions leading to the written warning was incorrect; 2) that no assets were ever at risk and the Casino experienced no loss of funds; and 3) Petitioner was being "targeted" by her supervisor because she was a 22-year employee with a spotless record until these events.

## **II. Issues**

**Was the Oneida Personnel Commission decision arbitrary and capricious?**

## **III. Analysis**

**Was the Oneida Personnel Commission decision arbitrary and capricious?**

No. Before analyzing the decision in this case, we discuss what arbitrary and capricious means.

We have previously stated:

Under the arbitrary and capricious standard, a reviewing court must consider whether an original hearing body's decision was based on consideration of relevant facts and evidence and whether there had been a clear error of judgment. The court may reverse only when the original hearing body offers a decision so implausible that it could not be attributed to the evidence and facts presented. Thus, the scope of review under arbitrary and capricious standard is narrow, and a court may not substitute its judgment for that of the original hearing body.

*Stanchik v. Oneida Police Department*, 08-AC-21 and 22 (01/27/2009) citing *Oneida Bingo & Casino v. Parker*, 10 O.N.R. 3-97, 04-AC-012 (10/22/2004); *Cornelius v. OPD*, 07-AC-020, (6/20/2008).

There has been no clear error of judgment here. The Personnel Commission reviewed the evidence and properly applied the relevant law. All three disciplinary actions were upheld and valid at the time the termination was initiated.

The three issues raised by Ms. Cornelius at the OPC were addressed by the OPC in its written decision and will only be addressed briefly here.

Ms. Cornelius' claim that incorrect information was contained on one of the infractions is a technical argument that did not detract from its validity. Ms. Cornelius argued that she signed but did not fill out a closing slip listing cheque totals for a table. As the Personnel Commission pointed out, her signature on the document is significant and if she signed a document without verifying the accuracy of it, that error is hers.

Ms. Cornelius claims that no assets were in jeopardy or lost due to her errors in the cheque-counting process. This is not the issue. Laws and rules are written to prevent harm or loss. Just because a person crosses a street against the light but is not hit by a car does not mean there is no violation. In short, whether loss occurred or not does not change that the Casino's rules were violated.

Finally, Ms. Cornelius argued that Mr. Lambert Metoxen targeted her unfairly. There is no evidence to support this argument. A few comments by Mr. Metoxen were in the record such as,

“Connie, you know how you are.” This comment is neutral on its face and we don’t see how it supports that Mr. Metoxen targeted Ms. Cornelius.

Ms. Cornelius raises several issues in her brief about a failure of leadership and poor business practices by her former employer. Unfortunately for Ms. Cornelius this is not a Court of Leadership or Court of Business. This is a Court of Law. Like the Personnel Commission we understand her life has been and will continue to be severely impacted by what has happened. There must be more to the story when a 22-year employee with a previously clear record is terminated. However, we are bound to apply the law to the facts before us. Those facts were established at the Personnel Commission level and did not include anything which established a clear error.

The decision is not so implausible that it could not be attributed to the facts presented. In fact, the decision is well-supported by the facts.

#### **IV. Decision**

The Oneida Personnel Commission decision is affirmed and the termination of employment upheld. IT IS SO ORDERED.