

Oneida Tribal Judicial System

Onʌyote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

APPELLATE COURT

**Oneida Child Care Department,
Appellant**

Docket No. 14-AC-005

vs.

**Chenoa Webster,
Respondent**

Date: September 9, 2014

DECISION

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

I. Background

On April 21, 2014, Appellant, Oneida Child Care Department, filed an appeal of the final decision of the Oneida Personnel Commission (OPC) decision, Docket No. 14-TER-001 of March 10, 2014 alleging it to be clearly erroneous and against the weight of the evidence. The Appeal was filed pursuant to Section 1.8-1(g)(1)(A) of the Oneida Administrative Procedures Act. The OPC decision overturned the termination of Respondent, Chenoa Webster. OPC found through testimony and evidence insufficient grounds for termination. We affirm the Oneida Personnel Commission of reinstatement of Ms. Webster.

A. Jurisdiction

This case comes to us as an appeal of an original hearing body, the Oneida Personnel Commission. Any person aggrieved by a final decision in a contested case can seek Oneida Tribal Judicial System review under Sec. 1.8-1 of the Oneida Administrative Procedures Act.

B. Factual Background

The Appellant, Joanne King, is a Supervisor at the Oneida Child Care Department. On October 24, 2013, Ms. King issued a termination to Respondent, Chenoa Webster for an infraction of Oneida Tribe's Personnel Policies and Procedures, Section V.D.2.IV Personal Actions and Appearance, Subsection b. Intimidating, interfering with or using abusive language toward customers, clients, co-workers or others. (S/T) and V.D.2.IV Personal Actions and Appearance, Subsection j. Failure to exercise proper judgment. (W/S/T)

The Date and Description of the Incident(s) indicated "SEE ATTACHED". The attachment dated October 24, 2013 contained the following information:

- That the Petitioner (Webster) violated the Oneida Tribe's Policies and Procedures by blocking Ms. Skenandore from leaving her office after she explained that she was leaving for a meeting;
- That the Petitioner (Webster) approached Ms. Skenandore again in the front office and insisted over and over that she accept written documents that were in the Petitioner's (Webster) hands.
- That the Petitioner (Webster) ignored and interfered with the phone conversation that Ms. Skenandore was on;
- And due to the Petitioner's (Webster) intimidating and forceful behavior, Ms. Skenandore felt it necessary to contact Oneida Police Department and file a report, which is still under investigation.

In reference to Personal Actions and Appearance, subsection j. Failure to exercise proper judgment. (W/S/T) The attachment stated:

“On Friday, October 18, 2013, you were called into my office to meet on this complaint at which time you informed me that you needed to leave because you had a sore throat which then turned into a medical emergency. You requested that I call an ambulance for you but then chose to leave on your own after a consultation with HRD/EEO Department. After further investigation you left the building and proceeded to Norbert Hill Sr. office, the office of Division Director Don White and Skenandoah Complex-where you requested services from the EEO Department. Based on the severity of the incidents and my investigation I am justifying deviance from the progressive discipline and am ending your employment with the Norbert Hill Child Care effective today Thursday, October 24, 2013.”

On November 7, 2013 Ms. Webster appealed to the Area Manager, Norbert Hill, Jr. Mr. Hill requested an extension of his review which was granted with a deadline of December 3, 2013.

On December 2, 2013 Mr. Hill upheld the termination.

On December 18, 2013 Ms. Webster appealed to the Oneida Personnel Commission alleging:

1. That the Area Manager’s decision is against the weight of the evidence, and/or procedural irregularities were exhibited during the appeal process that may have been harmful to her.
2. That had she provided her medical records for the dates of October 18th and October 31st, 2013, the Area Manager’s investigation may have resulted in a different outcome.
3. That the Area Manager had stated that Ms. Webster should have met with the next person in the chain of command, Dorothy Skenandore. Being fully aware of the fragile relationship between Ms. Webster and Ms. Skenandore, Mr. Hill should realize this would not be prudent, and it should not be held against her.

On January 14, 2014, Ms. Webster, submitted a Motion to Remand her appeal to the Area Manager due to new information. On January 23, 2013 OPC granted the remand. The Area Manager upheld his original determination of upholding the termination.

A grievance hearing was held before the OPC on February 17, 2014. Oneida Child Care was represented by attorney, Francine Skenandore, Ms. Webster was represented by advocate, Tami Hill. After a review of evidence and witnesses to be subpoenaed a recess was requested and granted due to inclement weather conditions. A hearing was scheduled for March 4, 2014.

On March 10, 2014 the Oneida Personnel Commission entered their decision overturning Ms. Webster's termination finding a review of testimony and evidence failed to support the termination. Ms. Webster was to be reinstated to her position of Child Care Worker at the Oneida Child Care Department, with full back pay and benefits from the time of termination to reinstatement. The Personnel Commission also ruled the termination shall be purged from her personnel file.

On April 21, 2014, Oneida Child Care Department appealed to the Oneida Tribal Judicial System, Appellate body alleging the decision of the Oneida Personnel Commission to be clearly erroneous and against the weight of the evidence and pursuant to the Oneida Administrative Procedures Act, Section 1.8-1(g)(1)(A).

C. Procedural Background

On April 23, 2014, the Initial Review Body, consisting of Judicial Officers Janice L. McLester, Lois Powless and Jennifer Webster, of the Oneida Tribal Judicial System, Appellate Court met and accepted the appeal for review, in accordance with Rules of Appellate Procedure, Rule 9(D)(5): *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.*

An exchange of briefs was completed on June 11, 2014 with receipt of Webster's Respondent brief. Appellant's attorney failed to accept certified mailing of Respondent's brief and did not submit an Appellant rebuttal brief.

The Appellate Review body consisting of Judicial Officer Janice L. McLester, Pro Tem Judicial Officer Carole Liggins, Judicial Officer Lois Powless, Judicial Officer Winnifred L. Thomas and Judicial Officer Stanley R. Webster deliberated on August 19, 2014 to review the merits of the appeal and now files its decision to affirm the decision of the Oneida Personnel Commission in overturning the termination of October 24, 2013.

II. Issues

Was the decision of the Oneida Personnel Commission clearly erroneous and against the weight of the evidence?

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

Did the Oneida Personnel Commission decision contain procedural irregularities?

III. Analysis

Was the decision of the Oneida Personnel Commission clearly erroneous and against the weight of the evidence?

No, it was not. Appellant asserted the Oneida Personnel Commission decision to be clearly erroneous and against the weight of the evidence presented at the hearing level.

“By making a finding that the lack of any Oneida Police Department action in the above-referenced case was a determinative factor in its decision, the Oneida Personnel Commission erroneously applied a non-employment standard to Appellant’s termination decision that was based on the Appellee’s violations of the Oneida Personnel Policies & Procedures. The Oneida Personnel Commission also made a finding that the evidence and testimony did not support the Area Manager’s decision to uphold Appellee’s termination, although the Area Manager’s decision was based on all available information, evidence and testimony obtained during his investigation of Appellee’s termination appeal. Appellee asserted in her appeal to the Oneida Personnel Commission that the termination decision exhibited procedural irregularities during the appeal process, but the Oneida Personnel Commission Final Decision did not make a finding whether Appellant followed the Oneida Personnel Policies & Procedures in the investigation and termination process.

Appellant asserts that the Oneida Personnel Commission Final Decision was arbitrary and capricious, and exhibits a procedural irregularity which would be considered a harmful error that may have contributed to the final decision, and if said irregularity were not present, the decision would have been different. The Oneida Personnel Commission made a finding there was a potential hostile working environment at the Oneida Child Care Department, a legal claim that was not the basis of Appellee’s termination appeal to the Oneida Personnel Commission and not asserted in the Appellee’s written appeal.”

The question before the OPC was whether the Area Manager's decision to uphold the termination was supported by evidence and testimony presented. In Hahnke v. White, Docket No. 12-AC-002, (5/24/2012), the Oneida Tribal Judicial System, Appellate Court previously held courts may not overturn an OPC decision unless there is a finding that the Personnel Commission "has made a clear error of judgment." The OPC is the fact finder in matters brought before them for review. They are the body delegated review under two standards: 1) Findings of fact are owed deference so that when findings are supported by the evidence presented they will be affirmed; and 2) Findings of fact are reversed only when the court is convinced when reviewing the record that the finding was unreasonable and a clear mistake has been made.

In this case the OPC reviewed videos and testimony to substantiate Appellant's claim of infraction of Oneida Personnel Policies & Procedures, Section V.D.2.IV. Personal Actions and Appearance, *Subsection b. Intimidating, interfering with or using abusive language toward customers, clients, co-workers of others.* OPC found the videos failed to substantiate this allegation. OPC found testimony presented by witness Dorothy Skenandore, who brought forward this complaint to supervisor Joanne King, failed to convince OPC of the credibility of this witness. After review of videos and evidence we concur with the Personnel Commission. The Personnel Commission was not unreasonable nor does it appear a clear mistake was made.

OPC reviewed testimony and evidence of the assertion that Ms. Skenandore was so intimidated by Ms. Webster's behavior that she filed a complaint to the Oneida Police Department. Ms. Webster testified she also filed a complaint at the Oneida Police Department of her encounter with Ms. Skenandore. The Oneida Police Department confirmed to Ms. Skenandore that both she and Ms. Webster had been entered as both suspects and victims because there were no charges filed against either party. OPC found no further action taken nor requested by either party to substantiate this assertion. After view of evidence and testimony we concur.

A review of the record indicates conversations between Ms. Skenandore and Ms. Webster, however the record fails to corroborate the allegations of intimidation or threatening behavior on

Ms. Webster's part.

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

No, it was not arbitrary and capricious. Under the arbitrary and capricious standard, a reviewing court must consider whether an agency's decision was based on a consideration of the relevant factors or whether there has been a clear error of judgment. The Appellate Court may reverse only when the agency failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or if so implausible that it could not be ascribed to a difference in view or product of agency expertise.

The court must determine whether the agency articulated a rational connection between the facts found and the choice made. It must also consider whether the agency's decision is based on a reasoned evaluation of the relevant factors.

Previous case law sets out the arbitrary and capricious standard:

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 the standard is narrow, and a court may not substitute its judgment for that of the original hearing body. *O-Tech Solutions, LLC, Mr. Curtis Danforth v. Oneida Bingo & Casino, Oneida Indian Preference*, Docket No. 10-AC-017, (12-10-10).

The *O-Tech Solutions, LLC* case states that the Appellate Court may not substitute a judgment of the trial court, unless the relevant facts of evidence or a clear error of judgment is presented. The Appellate Court can only overturn if the agency committed a clear error of judgment.

We find the OPC presented a reasoned and clear decision based upon facts and evidence presented.

Did the Oneida Personnel Commission decision contain procedural irregularities?

The Appellate body found no procedural irregularities within the OPC decision. The record does confirm some procedural irregularities existed in the disciplinary process by both supervisor Joanne King and Area Manager Norbert Hill, Jr. Ms. King issued a disciplinary of termination to Ms. Webster which directed Ms. Webster to file her appeal with Area Manager Dorothy Skenandore, when Ms. Skenandore was the original complainant to Ms. King.

Mr. Hill in his appeal decision indicated Ms. Webster should have followed the chain of command and “met with the next in the chain, Dorothy Skenandore”, when Ms. Skenandore was the original complainant to Ms. King.

We also note that the HRD Department, EEO Director, Matthew Denny through email communication to Ms. King drew conclusions regarding Ms. Webster’s actions and suggested violations of the Oneida Personnel Policies & Procedures before facts were determined. “If the employee had a medical emergency, they should have gone to the Emergency Room and not to the Human Resources Department. This is a direct violation of the following Personnel Policies and Procedures, Section V.D.2.c.1) Work Performance....Section V.D.2.c.4) Personal Actions and Appearance...” The record reflects that Ms. Webster did go to the Oneida Health Center prior to the HRD Department, and was told she could not be seen until later that day.

Ms. King’s termination letter of October 24, 2013, fails to document the fact that Ms. Webster first went to the Oneida Health Center prior to the Skenandoah Complex in her sequence of events utilized under Personal Actions and Appearance j. Failure to exercise proper judgment.

*“*After further investigation you left the building and proceeded to Norbert Hill Sr. office, the office of Division Director Don White and Skenandoah Complex-where you requested services from the EEO Department.”*

The Appellant requested a brief/memorandum be submitted and oral argument in the appeal of the OPC final decision, dated March 10, 2014, Docket 14-TER-001. We deny the requests. The Appellant filed her appeal pursuant to Section 1.8-1(g)(1)(A) of the Oneida Administrative

Procedures Act, which entitles any person aggrieved by either a final decision in a contested case appellate review:

(g) Appeals Commission Procedure.

(1) Time and Process

(A) An appeal shall be filed within thirty (30) business days of the entry of the final decision order or judgment appealed from.

Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 2(G) Starting an Appeal:

Oneida Administrative Procedures Act: An appellant may choose to file an appeal under the time line established by the Oneida Administrative Procedures Act, Which provides that an appeal must be filed within thirty business days of the entry of the original hearing body decision.

(1) In such an instance, a fully completed appellants brief must be filed, which shall be in conformance with these rules regarding brief format.

Appellant filed an Affidavit in Support of Notice of Appeal on April 21, 2014, but failed to accept Respondent Webster's Respondent's Brief received by the Oneida Tribal Judicial System on June 11, 2014.

The Appellant requested oral arguments of the OPC decision, dated March 10, 2014. Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 20(A) Oral Argument:

(A) When: If, after review of the briefs by parties, the appellate court finds that issues of fact or law remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully developed, oral arguments may be scheduled by the appellate court, provided that at least ten (10) days notice to the parties is given. Oral arguments may also be scheduled for consideration of a specific issue raised in a party's motion which the appellate court finds cannot be adequately addressed by review of motions only.

The Appellate body review found no issues of fact or law or positions to be unclear or not fully developed to require oral arguments.

Appellant failed to sway this Review body as to how the decision of the Oneida Personnel Commission in reversing the termination was clearly erroneous, arbitrary or capricious or contained a procedural irregularity.

The Appellate body is not the fact finder nor are we as close to the case as the original hearing body, in this case the Oneida Personnel Commission. It is the original hearing body that sees and hears first-hand the evidence and witness testimony presented when making their decisions. The Appellate Court may not substitute a judgment of the original hearing body, in this case Oneida Personnel Commission, unless a clear error of judgment is presented.

IV. Decision

The decision of the Oneida Personnel Commission is affirmed. Termination is reversed. Ms. Webster is to be reinstated to her position of Child Care Worker at the Oneida Child Care Department, with full back pay and benefits from the time of termination to reinstatement in accordance with the Back Pay Policy. Ms. Webster's personnel file will be purged of this discipline.

It is so ordered.