

COURT OF APPEALS

Tracy Metoxen,
Petitioner,

v.

Case #: 16-AC-003 & 16-AC-004

Barbara Metoxen,
and
Geraldine Danforth,
Respondents

Dated: April 4, 2016

INITIAL REVIEW and FINAL DECISION

Reviewing Oneida Appellate Judges: Gerald L. Hill, Chad Hendricks and Jennifer Hill-Kelley

The purpose of Initial Review (IR) is to answer threshold questions regarding the jurisdiction of a case and the procedural and material sufficiency of the Notice of Appeal. IR will determine if a case is ripe for appellate review, or not, and will determine whether the Trial Court or which Original Hearing Body (OHB) has jurisdiction. The Appellate Court shall accept an appeal, as set forth in 154.3(o), Initial Review, if any of following elements exists:

1. A violation of constitutional provisions.
2. The decision is outside the scope of the authority or otherwise unlawful.
3. The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level.
4. The decision is arbitrary and/or capricious.
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.
6. 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.

TO THE PARTIES NAMED IN THE ABOVE CAPTIONED CASES:

These cases, 16-AC-003 and 16-AC-004, are consolidated and joined with 15-AC-015 and 15-AC-018 pursuant to Rule 154.4-1, and Rule 13 (A), Oneida Tribal Judicial System Rules of Civil Procedure, as they arise out of the same factual circumstances with all the same parties named. The earlier appeals of the Appellant, 15-AC-015 and 15-AC-018, were accepted by this court and remanded to the Oneida Personnel Commission on November 30, 2015, with instructions to conduct a full hearing on the merits of all issues before that body. The Oneida Personnel Commission held a hearing on January 18, 2016, and rendered a decision that resulted in the present two (2) appeals. 16-AC-003 addresses the adverse employment issue (15-ADV-001) and 16-AC-004 addresses the termination issue (14-TER-008).

The Notices of Appeal for both filings included the same Personnel Commission Final Decision, dated February 16, 2016. Aside from the named Respondent(s), the Notices, statements, and the accompanying “Additional Information” were identical.

In the “Additional Information” under (2) *A Short Statement explaining what relief is sought by the Appellant*, the Appellant set forth fifteen (15) abbreviated statements of relief sought which addressed benefits the Appellant claims to have lost as a result of the Decision she alleged was erroneous. These included, overturning the decision, back pay, lost raises, reinstatement of vacation and personal time, reinstatement of insurance, reinstatement of years of service, reinstatement of her 401K retirement account as well as the employer contribution match for the time she has been off the job, 10% interest on all lost benefits, reimbursement of advocate’s fees, and holding accountable of thirteen (13) named individuals, including four (4) named elected Officers of the Oneida Business Committee and five (5) entities of the Oneida Nation, including the Oneida Business Committee. Additionally, the Appellant sought treble damages or assessments against the same named individuals and offices or entities of the Nation.

In (3) *A Short statement explaining the legal grounds for seeking the appeal and justification for the relief requested*, the Appellant included 27 allegations of violations of her legal rights among other things including loss of Due Process, Fundamental Fairness, Equal Protection, violation of unspecified constitutional provisions, decision making outside the scope of authority, arbitrary and capricious decisions, procedural irregularities, new evidence which would have changed the decision, obstruction by administrative staff of the Oneida Personnel Commission, Business

Committee Members tampering with and interfering in the process, the Oneida Law Office and attorney deliberately obstructing and delaying the process in order to harass the Appellant, and procedural irregularities by thirteen (13) named individuals and officers of the Oneida Nation.

The same thirteen (13) named individuals, including five (5) offices of the Nation are named as interfering in the appeal or decision making process, including the elected Officers of the Oneida Business Committee. The same persons and offices are also alleged to have colluded and conspired against the Appellant.

Seven (7) laws or policies of the Nation that were allegedly violated are listed, which include allegations that the disciplinary process, appeal process, adverse employment appeal process, Oneida Personnel Policies and Procedures Manual, Oneida Code of Ethics, Oaths of Office and time requirements for decisions were each and all violated, denied or obstructed.

While the sum of these allegations are numerous and repetitive, none meet the threshold of reliable statements of Oneida laws or any other law or policy. The allegations are unjustified conclusions of law or policy. The accusations are unsubstantiated in any respect against any of the named individuals or offices of the Oneida Nation.

The Decision of the Oneida Personnel Commission makes a total of nine (9) detailed findings addressing the matter that was the original basis of this case: a Disciplinary Action based upon specific behaviors and actions by the Appellant. The Personnel Commission found Section V.D.2.a.,b.,c., V.D.2.II Attendance and Punctuality, a,b, V.D.6.a,1)a)b)2.3.a, b, c, 4.a,b., of the Oneida Personnel Policies and Procedures, defining Disciplinary Actions, Attendance and Punctuality to be the applicable authorities governing this case. We agree with the Personnel Commission.

The Oneida Personnel Commission found that the Appellant had an excessive amount of call-ins (14) and 4 days in which she neither called nor reported for work. All dates and times of the call-ins and the no call/no shows were verified by credible evidence. One missing date identified by the Appellant was found to be a clerical error which would not have changed the outcome. We determine this to be a harmless error, pursuant to 150.8-3(c). The Personnel Commission found that the Respondent attempted to meet with the Appellant regarding the numerous absences, but

the Appellant failed to meet with the Respondent. The Personnel Commission found that the Respondent followed all required disciplinary procedures. The Commission also found no substance to the allegations of conflicts of interest. The Commission also found no substance to the accusation of a hostile work environment that caused the Appellant to abandon her job and rejected the allegation as without merit. It was also found by the Personnel Commission that the Area Manager had no conflict of interest nor did she lack the authority to act in this matter. Finally, the Commission found that the Appellant refused to attend a scheduled deposition with the Area Manager in the process that she, the Appellant, had initiated.

The Personnel Commission has met the Remand Directive of this court in all respects.

The decision of the Oneida Personnel Commission is AFFIRMED.

We find that the Appellant did not provide any functional demonstration of irregularities of provisions, substantive or procedural, of applicable Oneida Nation law. The appeals of the Appellant, 16-AC-003 and 16-AC-004 are DENIED.

By the authority vested in the Oneida Judiciary, Court of Appeals, pursuant to Oneida General Tribal Council Resolution 01-07-13-B.

It Is So Ordered.