

COURT OF APPEALS

Daniel D. Brooks,
Appellant,

Case #: 16-AC-008

v.

October 17, 2016

Oneida Personnel Commission,
Respondent.

INITIAL REVIEW DECISION

Reviewing Appellate Judges: **Gerald L. Hill, Chad Hendricks and Sharon House**

The Appellant, Daniel D. Brooks (hereinafter “Appellant”), filed a Notice of Appeal with this Court on September 16, 2016. After reviewing the information contained in the Notice of Appeal and the decision of the Oneida Personnel Commission (hereinafter “OPC”), as the original hearing body, it is determined:

The Appellant has not sufficiently alleged that the decision:

1. Violates applicable provisions of the Constitution;
2. Violates provisions, substantive or procedural, of applicable Tribal law or applicable federal law;
3. Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Is not supported by the substantial evidence on the record taken as a whole, nor has new evidence been presented that was unavailable at the time of the hearing, which, if available, may have altered the final decision.

Background

This case was heard by the OPC in continued hearings held on, July 14, 2016, July 22, 2016, and August 15, 2016. The OPC issued its decision on August 16, 2016. Only the portion of the final decision that finds the Appellant in contempt was reviewed.

In his Notice of Appeal, the Appellant alleges that the decision finding him in contempt was a denial of his right to due process, citing an earlier appellate case, *Dallas v. OPC*, 14-AC-014. The Appellant made no allegations other than his right to due process was violated.

The OPC set forth the CONTEMPT ISSUE apart from its decision on the main case. This is the only part of the Decision that was considered here.

Issue

Was the Appellant's due process denied?

The Appellant argues that his due process rights were violated when he was found in contempt by the OPC. Chapter 153.26-1(c) of the Oneida Judiciary's Rules of Civil Procedure states that an individual may be found in contempt by "refus[ing] to obey any order or judgment of the Court." Because the OPC is a formal deliberative body of the Oneida Nation composed of Commissioners duly sworn and under oath to conduct fair and neutral hearings under the laws of the Nation, any party who refuses to obey an order of the OPC may be found in contempt.

Due process generally means that an individual accused of violating a law, regulation, or lawful order must be given specific notice of what they have been accused of and the right to confront evidence supporting the allegation. Individuals are also entitled to an opportunity to defend themselves before a neutral forum.

The record shows that the Appellant was supplied with documentation warning him that due to the sensitive nature of the case, confidentiality was to be maintained. An oath was also administered to the Appellant prior to his testimony that stated; "*The testimony you are about to give is confidential and shall not be discussed with other individuals. Failure to comply will result in a finding of contempt.*" (Emphasis added) However, at the July 22, 2016 hearing the Appellant was asked if he had discussed the case with anyone outside of the hearing and he admitted he had done so. The Appellant thus disobeyed the order of the OPC to not discuss this case with anyone else.

We find that it was within the discretion of the OPC to find the Appellant guilty of Contempt as defined in 153.26-1(c). Despite the fact the Appellant was made aware of his legal obligation to

maintain confidence; he openly admitted that he had discussed the case with persons outside of the hearing. The Appellant's admission places this issue within the purview of 153.26-3. The OPC gave the Appellant an opportunity to respond and he was informed by the OPC that the matter of contempt would be addressed in the final decision. Therefore, the Appellant's right to due process was not denied.

The *Dallas* decision cited by the Appellant addressed different legal issues regarding due process and is inapplicable here.

The Decision of the Oneida Personnel Commission is hereby AFFIRMED. The decision on the appropriate sanction upon a finding of contempt is entirely within the discretion of the Oneida Personnel Commission and is not addressed except as follows: the levied assessment of five hundred dollars (\$500.00) by the Oneida Personnel Commission is also affirmed.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolution 01-07-13-B, this Appeal is hereby **DENIED**.

It is so ordered.