

COURT OF APPEALS

Elizabeth Somers,
Appellant,

Case No.: 17-AC-012

v.

Date: December 5, 2017

Oneida Personnel Commission and
Oneida Business Committee,
Respondents.

INITIAL REVIEW DECISION

This matter has come before Appellate Pro Tempore Judges Diane House and Chad Hendricks; Appellate Judge Sharon House, and Chief Appellate Judge Gerald L. Hill.

BACKGROUND

On March 28, 2017, Respondent Oneida Personnel Commission (hereinafter “OPC”) denied Appellant Elizabeth Somers’ (hereinafter “Somers”) request for employee protection (hereinafter “petition”). On April 6, 2017, Somers filed a Notice of Appeal with the Court of Appeals. We accepted this case for appellate review and vacated the March 28, 2017 OPC Initial Review Decision that denied Somers a hearing on her petition for employee protection. In addition, we remanded this matter back to the OPC. The remand instructed the OPC to provide the Court with precise times Somers attempted and actually filed her petition, and how this impacted its decision on whether to provide or deny Somers a hearing.

The OPC recused itself from hearing Somers’ petition for employee protection based on her May 2, 2017 Motion for Recusal in her suspension/termination case before them. Somers then filed her petition for employee protection with the Oneida Trial Court, which the Trial Court dismissed due to lack of subject matter jurisdiction.

On August 24, 2017, Somers filed a Notice of Appeal with this Court for both her employee protection and employee grievance cases. In response, we issued a second remand order to the OPC vacating both the May 5 and May 17, 2017 recusal decisions. We again ordered the OPC to convene an unbiased panel to address both Somers' employee protection and employee grievance petitions as remanded by the Trial Court.

On October 23, 2017, the OPC convened a panel of pro tempore Commissioners to address the outstanding issues identified in the Remand Orders issued on May 8 and September 26, 2017. Citing lack of merit, the OPC denied Somers a hearing on her employee protection petition on October 30, 2017.¹ Somers filed a Notice of Appeal of the OPC's denial of her petition with this Court on November 6, 2017.

DECISION

After reviewing the information contained in the Notice of Appeal and the OPC's November 9, 2017 amended decision, we determine that Somers has not sufficiently alleged the OPC's 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 unsupported 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.

Prior to her termination on the morning of March 24, Somers made several attempts to file her employee protection petition with the OPC before it was finally accepted by OPC staff. The OPC

¹ On November 9, 2017, the OPC issued an Amended Employee Protection Remand Decision that also denied Somers a hearing on her petition.

dismissed her petition and determined that Somers was not entitled to protection because she was terminated before it acknowledged receipt of her petition on March 24.² However, in its November 9, 2017 decision, the OPC determined the original petition was filed timely. The OPC then addressed the petition itself, and determined that it lacked merit to proceed.

Somers alleges that the OPC did not address any of the questions or directives in the Remand Order. This is incorrect. The intent of the Remand Order was to assist the OPC in determining whether Somers' petition was filed in time. The OPC convened a hearing panel and examined Somers' original petition as directed. Somers also asserts the OPC erred in assigning one of the panel members in the duplicative role as the hearing officer.³ This is a harmless error because it did not impact her hearing or the OPC's decision in any way.

It is unfortunate that Somers has encountered such obstacles while attempting to assert her due process rights throughout this appeal. Many of these obstacles could have been avoided if the OPC had done its due diligence regarding the circumstances surrounding Somers' original filing. Although she has encountered irregularities in getting her petition before the OPC, Somers has not provided a sufficient reason for this Court to review the OPC's denial of her petition for employee protection. The OPC duly considered Somers' original petition, and concluded it lacked merit to proceed. As a result, Somers has failed to state the legal grounds for her appeal under Oneida Rule of Appellate Procedure §805.5-2(c)(3). Therefore, the OPC's Order Denying Somers' Petition for Employee Protection issued on October 30, 2017, *in the Matter of the Initial Review Decision and Remand Order in Somers v. OPC*, designated as Case No. 17-AC-006, is hereby AFFIRMED.

² OPC Initial Review Decision, *In the matter of Elizabeth Somers v. Melinda Danforth and Lisa Summers*, March 28, 2017.

³ Somers argues the OPC failed to assemble a full Hearing Panel plus one Hearing Officer when pro tem Commissioner Billie Jo Cornelius acted as both panel member and hearing officer. She states this violates the OPC's own Hearing Officer and Panel selection policies which states: "[t]hree (3) Personnel Commission members are required for a grievance hearing plus one (1) Hearing Officer that will facilitate the hearing, but has no impact on the decision. Somers does not allege that Cornelius' assumption of this duplicative role impacted her hearing process in any way.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, this appeal is hereby **DENIED** for review, this 5th day of December, 2017 in the matter of Case No. 17-AC-012, *Elizabeth Somers v. Oneida Personnel Commission and Oneida Business Committee*.

It is so ordered.