

COURT OF APPEALS

Darlene Longcore, Oneida Bingo and Casino
Table Games Pit Manager,
Appellant,

Case No. 17-AC-017

v.

Date: May 18, 2018

Renee Lake,
Respondent.

FINAL DECISION

This matter has come before Appellate Judge *Pro Tempore* Diane House, and Appellate Judges Chad Hendricks and Sharon House.

INTRODUCTION

The Oneida Personnel Commission (hereinafter "OPC") overturned the termination that Darlene Longcore issued against Renee Lake on July 26, 2017. Darlene Longcore appeals the OPC's decision. The decision of the OPC is *reversed*.

JURISDICTION

The Court of Appeals has jurisdiction over this matter per §801.8-2(a)(2) of the Oneida Judiciary Law which gives this Court exclusive jurisdiction to review appeals of agency and administrative decisions.

BACKGROUND

On July 27, 2017, Respondent Renee Lake (hereinafter "Lake"), Table Games Floor employee, was terminated by her supervisor, Appellant Darlene Longcore (hereinafter "Longcore"). Lake was terminated for violating Oneida Personnel Policies and Procedures Section V.D.2. IV. *Personal Actions and Appearance*: (k) Failure to be courteous in dealing with fellow employees or the general public; and Section V.D.3. (b) *Accumulated Disciplinary Actions Warranting Termination*. Lake appealed the termination to the OPC. The OPC overturned Lake's termination on October 17, 2017.

Longcore filed a Notice of Appeal with the Oneida Judiciary on November 16, 2017. The Court of Appeals accepted this case for review on December 18, 2017. In her appeal, Longcore alleges the OPC's decision is clearly erroneous, arbitrary, an abuse of discretion, or otherwise not in accordance with applicable law; and not supported by the substantial evidence on the record taken. Longcore requests that the OPC decision be reversed and the termination notice issued against Lake be upheld.

ISSUES PRESENTED

1. Whether the OPC committed an error when they concluded that Longcore was required to terminate Lake immediately after receiving her second disciplinary notice within one year?
2. Whether the OPC's decision to reverse Lake's termination was clearly erroneous and not supported by substantial evidence?

ANALYSIS

One of the questions on appeal is whether the OPC erred when it concluded that Longcore was required to terminate Lake immediately after receiving her second disciplinary action within a year. To maintain this argument, Longcore would have to persuade this Court that the OPC committed legal error in exercising their discretion and 1) considered irrelevant factors; or 2) failed to consider relevant options or factors of the case that were presented during the hearing. We find that Longcore has met this burden.

Oneida Judiciary Law §801.8-3(c) Scope of Appellate Review states that "[w]ithout limiting the appropriate standard of review, the Court of Appeals shall give due deference to the rule of harmless error and discretionary decisions of the Tribe or any Tribal agency." To interpret this, we look for guidance in determining how to review judicial rulings in discretionary matters. In *Koon v. United States*, the Supreme Court determined that a district or lower court by "definition abuses its discretion when it makes an error of law." 518 U.S. 81, 100 (1996). This leaves the Court with the understanding that the failure to apply the law correctly in reaching a decision is an abuse of discretion. Based upon this standard of review, we essentially review for legal error

under a *de novo* standard. This means we independently determine whether the correct standard of law was applied but uphold the trial court's findings of fact unless they are clearly erroneous. *Id.*

The OPC held that Longcore violated Oneida Personnel Policies and Procedures §V.D.3.b when she did not terminate Lake immediately after she received her second suspension on March 15, 2017. The OPC ruled that the appropriate time to terminate Lake would have been immediately after her March 15 suspension, not four months later when Lake was being investigated by Longcore on another issue.¹

Automatic Termination Not Required

Longcore maintains that the OPC committed an error when the OPC failed to consider long-standing precedent in interpreting §V.D.3.b. She asserts that case law has long held that management has the discretion to 1) issue a termination notice after accumulation of the required disciplinary notices within any twelve (12) month period; or 2) allow the employee to remain employed until another violation occurs and then issue a termination notice under both this accumulation section and the new violation.² We agree with Longcore's argument.

Interpreting existing case law is question of law that we also review *de novo*. The former Appeals Commission³ and this Court have been consistent in interpreting §V.D.3.b. of the Personnel Policies and Procedures. As recent as in *Tina Moore v. Mark Skenandore*,⁴ this Court affirmed the long-held position that the manager has the discretion to decide whether to issue a termination notice after the accumulation of the required disciplinary notices has occurred within any twelve (12) month period. As a result, the OPC committed a legal error in exercising its discretion when it declined to consider this long-held precedent in interpreting the accumulative disciplinary notice section at issue. Longcore had the discretion to wait until another disciplinary action was issued before she terminated Lake under §V.D.3.b. of the Personnel Policies and

¹ See October 17, 2017 Oneida Personnel Commission Grievance Decision, pg. 7.

² See Appellant's Brief, pg. 5.

³ See *Doug Skenandore v. Oneida Custodial Department* (95-EP-0016, decided January 9, 1996).

⁴ Docket #15-AC-011, decided November 10, 2015.

Procedures. Therefore, we find that the OPC erred in finding the termination for two upheld suspension was not done in compliance with §V.D.3.b. of the Personnel Policies and Procedures.

Were the Findings Made by the OPC Clearly Erroneous?

This case also involves several questions of fact, entitled to the 'clearly erroneous' standard of review. Oneida Judiciary Law 801.8-3(a)(1) states that review by the Court of Appeals "shall be limited to matters of record in the case, and may reject a finding of fact only where it determines that the finding is clearly erroneous." This clearly erroneous standard means that this Court must accept the lower courts' finding of fact unless we are convinced that a mistake has been made.

Longcore asserts that the OPC's finding that there was no evidence of a valid complaint submitted by the dealer was erroneous. The dealer did not need to file a written complaint as stated by the OPC. Oneida Personnel Policies and Procedures Section V.D.1.a. allows the employee to lodge either a verbal or written complaint. The OPC completely disregarded the testimony of the dealer who complained to her supervisor of feeling belittled by Lake in front of a customer on the day in question. According to the termination notice issued on July 26, 2017, the supervisor became aware of a complaint against Lake on July 19, 2017, the date of the dealer's evaluation. The supervisor then proceeded to investigate the complaint against Lake. The investigation was concluded on July 26, 2017, and Lake was issued her third disciplinary action within a year for violating §V.D.2.IV. *Personal Actions and Appearance*: (k) Failure to be courteous in dealing with fellow employees or the general public. The OPC erred by not recognizing the complaint, and as a result, it also failed to recognize the issuance of any findings resulting from this complaint.

Longcore also asserts the OPC's finding that she failed to prove Lake's discourteous behavior because she could not provide a witness to support the dealer's version of the incident in question was erroneous. The OPC held the Area Manager failed to prove discourteous behavior occurred by not producing a witness to the dealer's complaint. However, the only witness to this event was the dealer herself. The OPC recognized the dealer's direct testimony, but erroneously concluded that the investigation may not have been properly conducted because this "witness" testimony wasn't offered to support the dealer's accusation that Lake treated her discourteously. When an employee files a complaint, at times there are no witnesses. The OPC erred when they

determined that there was a witness in the first place, and then erred when they concluded that because this “witness” could not corroborate the dealer’s version, the incident in question did not occur.

The OPC also made a finding that the nothing was done for over four months after the second suspension was issued and that “four months is not a reasonable time to hold an impending termination over an employee”.⁵ This is an erroneous finding as it was this third violation that justified Lake’s termination and policy violation of V.D.3.b. *Accumulated Disciplinary Actions Warranting Termination*, and not the recent conclusion of an investigation that should have been completed over four months prior.

CONCLUSION

We agree with Longcore that the OPC erred and abused its discretion when it found that Longcore did not comply with the requirements of Personnel Policy and Procedure §V.D.3.b. and was required to terminate Lake immediately after receiving her second disciplinary action within a year.

We also agree with Longcore that the OPC erroneously found there was no valid complaint and that the investigation may have been improperly conducted because no witness testimony was offered to support the dealer’s accusation that Lake treated her discourteously. Therefore, the OPC’s decision to overturn Lake’s termination issued on July 27, 2017 is hereby reversed.

DECISION

Based upon the foregoing, the Oneida Personnel Commission Grievance Decision in Docket No. 17-TER-003, dated October 17, 2017, which overturned Lake’s termination is hereby *reversed*.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolution 01-07-13-B and 03-19-17-A, this final decision is issued this 18th day of May 2018, in the matter of Case No. 17-AC-017, *Darlene Longcore v. Renee Lake*.

It is so ordered.

⁵ See October 17, 2017 Oneida Personnel Commission Grievance Decision, pg. 7.