

COURT OF APPEALS

Dianne McLester-Heim,
Appellant,

Case No. 19-AC-002

v.

September 26, 2019

Evelyn M Stevens,
Respondent.

FINAL DECISION

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

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 February 7, 2018, Respondent Evelyn Stevens (hereinafter “Stevens”), an employee of Oneida’s Comprehensive Health Division, filed for Employee Protection with the Oneida Personnel Commission (hereinafter “OPC”). The OPC granted Stevens an Interim Order of Protection and scheduled an Employee Protection hearing for March 1, 2018. On February 19, 2018, Stevens gave her two week’s notice that she was resigning her position with the Comprehensive Health Division. At Stevens’ Employee Protection hearing on March 1, the OPC ordered Stevens’ Area Manager, Jeffrey Carlson (hereinafter “Carlson”), to create a written report on whether the disclosure of an alleged HIPAA violation had merit. The OPC also granted a six

(6) month Protective Order for Stevens. On April 2, 2018, Carlson reported that he found no merit in the disclosure.

The OPC was dissolved on April 12, 2018 and on May 11, 2018 the case was transferred to the TC. On July 16, 2018 the TC ordered Employee Protection for Stevens indefinitely. Attorney Garvey submitted a Motion to Join a Necessary Third Party, HIPAA Privacy Officer David Larson (hereinafter “Larson”), on October 4, 2018, which the TC granted. Attorney Garvey then submitted a Motion to Dismiss on behalf of Larson for failure to state a claim and lack of subject matter jurisdiction on October 10, 2018, which the TC denied.

Stevens’ Employee Protection hearing was held on four separate dates in October and November. In its decision on December 31, 2018, the TC held there was no HIPAA violation, but found that Dianne McLester-Heim (hereinafter “McLester-Heim”) did retaliate against Stevens and ordered that McLester-Heim be put on Investigative Leave and the EEO Department Director conduct an investigation of the alleged workplace violence incidents. The TC also ordered the EEO Director to consider disciplining Carlson. The Appellant filed this appeal on January 31, 2019 and requests that this Court grant the Motion to Dismiss for lack of subject matter jurisdiction.

ISSUE PRESENTED

1. Whether Stevens is entitled to Employee Protection.

ANALYSIS

The one question this Court must answer is whether Stevens is entitled to Employee Protection. If she is entitled to Employee Protection, then we shall look into the merits of whether the TC correctly decided if Stevens was entitled to Employee Protection. However, if Stevens is not entitled to Employee Protection, this case is now moot and must be dismissed for lack of jurisdiction.

Employee Protection

McLester-Heim moved to dismiss Stevens' Employee Protection action arguing that the TC lacked subject matter jurisdiction and that Stevens failed to state a claim for relief. As a threshold matter, Larson asserts that Stevens' request for Employee Protection was moot prior to the TC's decision because Stevens was no longer an employee of the Oneida Nation. Therefore, the statute did not entitle her to Employee Protection. We agree.

The purpose of the Nation's Employee Protection Policy is "to give protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft or other detrimental effects." §211.1 - *Employee Protection Policy*. An employee is defined as "any person working for the Oneida Nation in its programs, enterprises, and governmental functions, whether elected, appointed, or hired as a limited term employee, vendor, or contractor." §211.3-1(e) - *Employee Protection Policy - Definitions*.

Stevens filed for Employee Protection with the OPC on February 7, 2018 after she made a disclosure of an incident that occurred on November 20, 2017. Two days later the OPC granted her Interim Employee Protection and scheduled a hearing for March 1, 2018. However, on February 19, 2018, Stevens voluntarily gave her two-week notice that she was resigning from her position in Comprehensive Health with an effective date of March 1, 2018. This Court has no issue with the OPC granting Stevens Interim Employee Protection on February 9, 2018. However, when she resigned her position two-weeks later, her Employee Protection case was then moot because she was no longer an employee entitled to protection per the Employee Protection Policy.

Whether a case is rendered moot is a question of law that we review *de novo*. *Higgason v. Farley*, 83 F.3d 807, 811 (7th Cir. 1996). A case becomes moot when there is no longer a dispute between the parties or when "there is no possible relief which the court could order that would benefit the party seeking it." *Banks v. National Collegiate Athletic Ass'n*, 977 F.2d 1081, 1085 (7th Cir. 1992); see also *In re Envirodyne Indus., Inc.*, 29 F.3d 301, 303 (7th Cir. 1994). When it is determined that a plaintiff's case is moot, it must be dismissed for lack of subject matter jurisdiction. See *Holstein v. City of Chicago*, 29 F.3d 1145, 1147 (7th Cir. 1994).

Here, Stevens cannot benefit from being granted Employee Protection because she is not an employee of the Nation. The purpose of the Employee Protection statute is to protect employees from *employment-related* retaliation in the event they provide some information that is intended to protect the Nation from damaging effects. Since Stevens is not an employee of the Nation, she would receive no benefit from receiving Employee Protection. She does not have to worry about any employment related retaliation.

The facts of this case are relatively straightforward and the law is not complex. The issue of whether Stevens qualified for Employee Protection was moot by the time it reached the TC, and as a result, the TC lacked subject matter jurisdiction. *See Pakovich v Verizon LTD Plan*, 653 F.3d 488, 492 (7th Cir. 2011). Thus, when the TC issued its decision granting Stevens Employee Protection and holding that McLester-Heim retaliated against her, it lacked the jurisdiction to do so.

CONCLUSION

Since Stevens voluntarily resigned and was no longer employed by the Nation when her petition for Employee Protection hearing was held before the TC, her petition should have been dismissed as moot. We hold the TC erred in not recognizing that once Stevens was no longer an employee with the Nation, there was no effective relief under the Employee Protection Policy that the TC could fashion. Accordingly, we vacate the TC's decision to grant Stevens Employee Protection and its holding that McLester-Heim retaliated against Stevens. Furthermore, the TC's orders to: 1) put McLester-Heim on Investigative Leave, and 2) for the EEO Director to conduct an investigation of workplace violence and consider disciplining Carlson are also vacated.

DECISION

Based upon the foregoing, the TC's decision dated July 9, 2018 granting Stevens Employee Protection in Case #18-EMP-003 is vacated. We also vacate the TC's decision dated December 31, 2018. Stevens' petition for Employee Protection is hereby dismissed as moot. Moreover, since Stevens is no longer an employee of the Nation further proceedings are also moot.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 3-19-17A, this Final Decision is issued this 26th day of September, 2019, in the matter of Case #19-AC-002, *Dianne McLester-Heim v. Evelyn Stevens*.

It is so ordered.