

# ***Oneida Tribal Judicial System***

Onʌyote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

## **TRIAL COURT**

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Julie Mitchler,  
Petitioner,

Docket #: 12-TC-108

v.

Oneida HRD-Benefits  
Crawford and Co. Insurance,  
Respondents

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### **DECISION**

This case has come before the Oneida Tribal Judicial System, Trial Court, Judicial Officers, Mary Adams, Sandra L. Skenadore, and Jean M. Webster, presiding.

#### **Background**

On May 29, 2012 Petitioner, Julie Mitchler, filed a complaint against Respondent, Oneida HRD-Benefits and Crawford and Company Insurance for denial of her Oneida Worker's Compensation benefits. The Court agrees because Dr. Spears eventually diagnosed her with 7% permanent partial disability.

Respondents deny Petitioner's claim based on Oneida Worker's Compensation Law, Section 13.10.4: Discontinuance of Benefits effective April 6, 2012, because that's the date Dr. James Spears provided a medical release for Petitioner to return to regular job duties.

#### ***Procedural History***

Previously, Petitioner suffered a fall at the Oneida Casino in February 2010, injuring both knees resulting in surgery on her right knee. The Trial Court awarded Petitioner some permanent partial disability and denied other benefits in the decision *Mitchler v. Oneida HRD, et al.*, 11-TC-038, 5/12/11.

This claim is for an injury she suffered on November 21, 2011, she tripped over a mat at work and fell on her right knee. On July 9, 2012 Dr. Brian Lohrbach performed surgery on Petitioner's right knee.

On June 15, 2012 Respondents filed a Motion to Dismiss based on the following 1) Petitioner's claim for damages are barred by the doctrine of sovereign immunity and 2) Petitioner has failed to state a claim upon which relief may be granted. Respondents argue in the *Mitchler* 11-TC-038 the Trial Court assessed a 5% permanent partial disability for each knee, for a total rating of 10% based on Dr. James Spears, the physician who treated Petitioner. That case is closed. In this case, Respondents assert Dr. James Spears rated Petitioner's November 2011 fall on her right knee at a 7% permanent partial disability rating. Respondents point out according to the Oneida Worker's Compensation Law only permanent partial disabilities which exceed seven and one half percent (7 ½%) are compensable.

On July 3, 2012 a Pre-trial hearing was held and the Court issued a Scheduling Order which defined several procedural dates including the October 16, 2012 Trial date. The following issues were addressed:

1. The parties shall be prepared to argue whether Petitioner's injury has resulted in 7.5% PPD or more based on medical evidence.
2. Petitioner agrees with Respondent's Motion that Petitioner's claim for damages is barred by the doctrine of sovereign immunity.
3. Respondent's Motion to dismiss based on Petitioner's failure to state a claim upon which relief may be granted. The Court granted Petitioner's case to move forward against Respondents on the grounds of Petitioner's right to present and argue her case in order to move forward.

### **Analysis**

#### *Petitioner's arguments*

Ms. Mitchler has been an employee of the Oneida Casino for twenty years and a floor supervisor for the last five years. She has had two separate injuries while working for the Oneida Casino, the first was in 2010 where she fell and hurt both knees. She went through arthroscopic surgery on both of her knees. Ms. Mitchler was rated at a 5% permanent partial disability in each knee, which resulted in a total of 10%. That matter

was resolved by this court and Oneida Worker's Compensation paid the claim and the case was closed. In 2011 Ms. Mitchler fell again over mats at the Casino and twisted her right knee. She went through arthroscopic surgery with Dr. Spears, but did not heal to the extent that she was expected. After the surgery, Dr. Spears eventually diagnosed her with 7% permanent partial disability. Since Ms. Mitchler was rated at a 5% in 2010 and currently rated at a 7% that gives Ms. Mitchler a 12% permanent partial disability.

After Ms. Mitchler went through arthroscopic surgery by Dr. Spears she continued to feel quite a bit of pain and sought a second opinion from Dr. Lohrbach who recommended a partial knee replacement, which was performed in September 2011.

Petitioner argues that the partial knee replacement was medical necessary, that's it's covered by Oneida Worker's Compensation Law and that the Tribe be obligated to pay for the surgery, lost personal/vacation time for rehabilitation in order to reach her point of healing.

#### *Respondent's arguments*

The issue presented is what percentage of permanent partial disability should be assigned to Ms. Mitchler in this case. After Dr. Spears performed the arthroscopic surgery to Petitioner's knee he rated her at 7%. Dr. Spears testified that he had done all he could, so now Petitioner would need to do her part. Dr. Aschliman, who performed Ms. Mitchler's independent medical examination, assigned a permanent partial disability rating of 5 percent. Pursuant to Worker Compensation Law, the employer must provide the employee medical surgical services incurred by the employees as a direct result of compensable injury. The Tribe asserts that it has met this duty by acknowledging that Ms. Mitchler's workplace injury to her right knee was indeed a workplace injury and thereby provided her medical treatment with Dr. Spears. Both Dr. Aschliman and Dr. Spears rated Ms. Mitchler less than the 7 ½ % needed in order for her claim to be compensable under Sec. 13.6-10(h).

In September 2011, Dr. Lohrbach performed a partial knee replacement on Ms. Mitchler. Dr. Lohrbach rated Ms. Mitchler as having 45 % permanent partial disability. The Tribe

asserts the finding of 45% permanent partial disability by Dr. Lohrbach should be disregarded. Two doctors, Dr. Spears (7%) and Dr. Aschliman (5%), rated Ms. Mitchler below 7 ½ %.

*Findings of Fact*

On November 21, 2011, Ms. Mitchler fell at the casino and injured her right knee. The injury was work-related and the Tribe provided benefits and paid for medical treatment through April 6, 2012. On April 6, 2012, Ms. Mitchler's doctor, Dr. Spears, released Ms. Mitchler to return to work without restrictions. He also stated that Ms. Mitchler had reached maximum medical improvement.

Based on Dr. Spears' statements, the Tribe's workers comp administrator stopped providing benefits in accordance with Sec. 13.10-4.

Ms. Mitchler filed an appeal. The Tribe had Ms. Mitchler receive an independent medical examination (IME). The IME doctor, Dr. Aschliman, rated Ms. Mitchler's permanent partial disability at 5%.

Ms. Mitchler continued to suffer pain. She sought a second opinion and met with Dr. Lohrbach who rated Ms. Mitchler's permanent partial disability as 45%. In July, 2012 Ms. Mitchler received a partial knee replacement from Dr. Lohrbach.

We incorporate by reference all of the exhibits from the hearing, including Dr. Aschliman's letter and Dr. Spears' deposition testimony into our findings of facts.

When submitting paperwork to the Tribe in relation to her knee replacement, Ms. Mitchler failed to check a box which indicated that the injury was work related.

*Conclusions of Law*

The parties appear to agree that whether further compensation is due is governed by Sec. 13.6-10(h) which states:

(h) *Permanent Disabilities*. Minimum percentages of loss of use for amputation level, losses of motion, sensory losses and surgical procedures as set out herein. The percentages assume that the member, the back, etc., was previously without disability. Only percentages exceeding seven and one half percent (7½%) will be deemed compensable.

As explained below, we conclude that Ms. Mitchler's permanent partial disability is 7% and therefore she is not eligible for further compensation under Sec. 13.6-10(h). We are most persuaded by the testimony of Dr. Spears and the report of Dr. Aschliman. Dr. Spears testified through his deposition that Ms. Mitchler's permanent partial disability was 7% after the second arthroscopy on her right knee, after the second fall. Dr. Aschliman puts the number at 5% but he did not have the benefit of seeing the inside of the knee as Dr. Spears had.

Dr. Lohrbach's assessment is less persuasive. Aside from being the only one of the three doctors above the 7 1/2 % threshold, Dr. Lohrbach's assessment is so much greater than that of Dr. Spears and Dr. Aschliman's that its credibility and accuracy are brought into doubt. Furthermore, we give the most weight to Dr. Spears' assessment. He originally treated Ms. Mitchler in 2010 and showed the greatest depth of knowledge of her condition and of her as a patient.

In addition to the weight of Dr. Spears' and Dr. Aschliman's assessments, we are not persuaded the knee replacement was sufficiently linked to the workplace injury. Dr. Spears and Dr. Aschliman both indicated that a certain amount of degeneration of Ms. Mitchler's knee is taking place as a result of normal wear and tear, Ms. Mitchler's weight and her occupation of being on her feet all day.

Here again Dr. Spears was persuasive. Dr. Spears' stated that in his opinion a knee replacement was not indicated after he viewed Ms. Mitchler's knee with the scope. We are not persuaded that the second fall and resulting 7% disability were so severe as to indicate knee replacement. Dr. Aschliman's report further supports the idea that knee replacement was not linked to the injury: he opined that Ms. Mitchler suffered from pre-

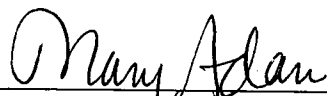
existing pathology and that the surgical findings indicated a long-standing degenerative process.

### Decision

The Court concludes that Ms. Mitchler's permanent partial disability is 7% and therefore not compensable under Sec. 13.6-10(h). We also find that Ms. Mitchler's knee replacement should not be subject to benefits because the underlying condition requiring the knee replacement was not sufficiently related to her workplace injury, nor one that is compensable under the ordinance. Further benefits are denied.

IT IS SO ORDERED

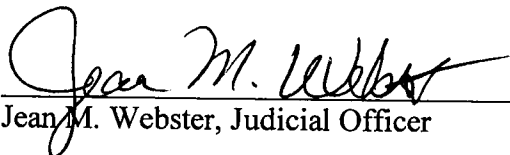
By the authority vested in the Oneida Tribal Judicial System pursuant to Resolution 8-19-91A of the General Tribal Council a hearing was held on October 22, 2012 and decision signed on this November 30, 2012, in the matter of Julie Mitchler v Oneida HRD Benefits-Crawford Ins Company, Docket Number 12-TC-108.



Mary Adams, Lead Judicial Officer



Sandra L. Skenadore, Judicial Officer



Jean M. Webster, Judicial Officer