

# *Oneida Tribal Judicial System*

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## TRIAL COURT

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Susan Bozile,  
Petitioner

Docket #: 13-TC-130

v.

Oneida HRD/Benefits and  
Crawford & Company Insurance,  
Respondents

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## DECISION

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

*Appearing in person:* Petitioner, Susan Bozile and Respondents, Christina Blue Bird of HRD Benefits and Jessie Nickel of Crawford & Company Insurance.

Both parties appeared without counsel.

### **Background**

This case arises out of Ms. Bozile's workers compensation claim after she suffered a knee injury while at work on September 29, 2013. Ms. Bozile works as a security guard at the Oneida Casino. Respondents denied the claim and Ms. Bozile appealed. Although the injury did occur while Ms. Bozile was at work, there is not sufficient evidence for us to find that the injury was unusual or peculiar to her work or otherwise caused by the fact that Ms. Bozile happened to be at work. We affirm the denial of benefits.

### **Findings of Fact**

Ms. Bozile works as a Security Officer for the Oneida Bingo & Casino. Ms. Bozile's injury occurred on September 29, 2013, while at work. She had concluded a ticket fill and as she turned she felt a sharp pain in the right side of her right knee. Ms. Bozile went to Bellin Occupational Health the following day. Ms. Bozile stated she had no previous knee injuries, but admitted to having pain in the knee from time to time.

The court accepted into evidence and include in our findings of fact notes from Amy L. Hess, APNP dated September 30, 2013 when Susan J. Bozile was seen at Bellin Occupational Health. In Dr. Hess' notes she explained to the Petitioner "that because this happened at work it is not necessarily a work related injury as there is no cause for the injury other than standing and changing position". Dr. Hess' notes the Petitioner admitting to having pain in the knee from time to time prior to September 29, 2013. Ms. Bozile affirmed this by stating it again at the pre-trial hearing.

Ms. Bozile introduce two (2) documents during the hearing. We summarize them here and include them in our findings of fact by reference.

The first document was from Ms. S. Erickson, Security Officer at Gaming, who witnessed the injury. Ms. Erickson's statement says Ms. Bozile had done a ticket fill and as Ms. Bozile turned around to walk away she caught herself before she hit the floor. Ms. Erickson asked if Ms. Bozile was OK and she said she did something to her knee and would try and walk it off. Ms. Erickson walked with Ms. Bozile for a while and it just got worse. Erickson stated she saw Ms. Bozile a few days later and the Ms. Bozile told Ms. Erickson the knee wasn't getter and that Ms. Bozile was going to make a doctor's appointment.

The second document was a letter dated January 15, 2014, from Dr. Patrick J. McKenzie, Orthopedic & Sports Medicine Specialist of Green Bay, WI. The letter stated he saw the Petitioner on 10/30/13 and that Ms. Bozile had surgery on 12/2/13 as Petitioner had significant chondral defect of her patella down to the bone. Dr. McKenzie further stated he did not believe

the MRI shows a preexisting condition, and believed the workplace injury caused the injury. There is no further elaboration on why Dr. McKenzie believed the workplace injury caused the injury; Dr. McKenzie did not appear at the hearing or otherwise testify under oath.

### **Conclusions of Law**

Petitioner claims the injury is work related because the injury happened at work. There are three relevant portions of the Oneida Workers Compensation Law that apply to Ms. Bozile's claim. First, Sec 13.3-6 defines physical harm as any "injury arising out of and in the course of employment, *unusual or peculiar to work*, including specific injury, repetitive traumatic injury, or occupational disease which arises from exposure to conditions or circumstances *beyond those common to occupational and/or non-occupational life* and is predominantly work related." (Italics added for this opinion only). Physical harm, if established, is a "covered injury" under Sec. 13.3-12.

Section 13.3-9 states that the burden of proof "is on the party advancing a particular claim or defense, and the standard of proof is by a preponderance or greater weight of the evidence."

Given Ms. Bozile's claim the legal issue is whether she has shown by a preponderance of the evidence that she suffered "physical harm" as that phrase is defined in Sec. 13.3-6 of the ordinance. In our view, she has not.

The parties do not dispute this injury occurred while Ms. Bozile was at work. However, Ms. Bozile did not present evidence that satisfying the rest of the definition of physical harm. Specifically she did not prove that her injury was "unusual or peculiar to work" or that it arose from exposure to circumstances "beyond those common to occupational and/or non-occupational life." Sec. 13.3-6. Although it is often the case, not every injury that occurs at work is due to the fact that the employee happens to be at work. There is nothing in the evidence presented by Ms. Bozile that connects her injury to her employment as a security officer. She had just completed a ticket fill and then turned. Upon turning, she felt pain in her knee. Turning to walk is not an activity is peculiar or unusual to work. There is no evidence that there was some unusual or uncommon condition in the work place that caused the injury.

By contrast, we have confirmed benefits when an employee has encountered unusual or uncommon circumstances at work. By way of example, it was uncontested in *Bennett v. HRD Benefits and Crawford & Co. Ins.*, 11-TC-144, (6/25/2012), that the employee had been exposed to conditions peculiar or unusual to work. In *Bennett v. HRD Benefits and Crawford & Co. Ins.*, the employee had to operate an old telephone answering system for six hours without a break due to a power failure at the Casino. She suffered pain thereafter and received treatment. The issue was how far her benefits should extend, not whether her injury was peculiar or unusual to work.

In Ms. Bozile's case, there is absolutely no evidence before us establishing that her injury was peculiar or unusual to work. She apparently was turning and then felt pain in her knee. There is no other unique circumstance or condition presented. Dr. McKenzie makes an unsupported assertion that the injury is work related. While we respect a doctor's opinion, an opinion without reasoning or supporting evidence is not sufficient to meet the requirement of the law.

The Court finds the Petitioner has failed to meet the burden of proof that she suffered physical harm as that term is defined in the Workers Compensation Law. Therefore the Court grants the Respondent's motion to dismiss with prejudice.

### **Decision**

The Court finds in favor of the Respondent and grants the Respondent's motion to dismiss with prejudice.