

# ***Oneida Tribal Judicial System***

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## **TRIAL COURT**

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**ProCare Medical Supplies LCC,  
Ronald H. Lambert, Jr.  
Petitioner**

**Docket No: 14-TC-047**

**v.**

**Date: June 3, 2014**

**Indian Preference Department,  
Marjorie Stevens  
Respondent**

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## **DECISION**

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This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, Jean M. Webster, and Leland Wigg-Ninham, presiding.

### **Background**

This case involves the Indian Preference Department's (IPD) denying certification to Petitioner as an Indian-owned business.

On April 24, 2014 Petitioner filed an appeal against Respondent claiming that Respondent mis-categorized his business and even if they used the category for his business that they cited to deny, that under the same law his business is still within the rules of Chapter 57. Petitioner asserts he is filing under the rules for Appellate Procedures, Criteria for Accepting Appeals, Rule 9(D)3.

On May 7, 2014 Respondent filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction pursuant to Rule 14(B)5; of the Rules of Civil Procedure and included the following arguments:

1. On March 7, 2014, Petitioner sought certification as an Indian – owned business and provided an application and supporting documents to the Respondent’s Office.
2. On March 19, 2014 the Office sent a letter to Petitioner denying certification of ProCare Medical Supplies. The letter provided Petitioner with his appeal timelines.
3. Petitioner filed an appeal with OTJS on April 24, 2014.
4. Chapter 57.10-8(a), states “Any appeal from an action taken by the Office shall be filed with OTJS within ten (10) business days after the date of issuance of the Office’s decision. Any decision not appealed within the required time frame shall be come final.”
5. Petitioner’s appeal was due April 2, 2014, since the letter is dated March 19, 2014. If Petitioner is relying on the March 31, 2014 letter, the appeal was due April 14, 2014. Petitioner provided documentation that supports his appeal was post marked on April 15, 2014.
6. Petitioner’s appeal was filed untimely and according to the Law the decision of the Office is final.
7. Respondent requests this court dismiss the complaint pursuant to Rules of Civil Procedure, Rule 14(B)5.

On June 3, 2014 a Pre-trial was held to aid in the simplification, clarification, settlement or disposition of the case and/or to set a scheduling order defining dates for witness information, document exchange time lines and trial dates should the case move forward. Both parties appeared; Petitioner appeared without counsel (self-represented) and Respondent appeared with counsel.

### **Jurisdiction**

We take original jurisdiction of this case under Section 1.10-1 of the Oneida Administrative Procedures Act and Section 57.4-1 and 2, which states that the OTJS shall have exclusive jurisdiction over all other matters relating to the interpretation and enforcement of this law.

### **Issue**

Did Petitioner file his appeal untimely?

### **Findings of Fact**

1. On March 3, 2014 Petitioner, Ronald Lambert, Jr, owner of ProCare Medical Supplies, LLC submitted his application for an Indian Preference Vendor Certificate.
2. On March 19, 2014 Respondent denied his application in a memo and included the timelines to filing his appeal.
3. On March 31, 2014 Respondent addressed Petitioner's questions and again addressed Petitioner's Vendor Certificate denial.
4. As an exhibit, Petitioner included a copy of his certificate of mailing dated on April 15, 2014 to OTJS but had the incorrect address. It also showed it was re-mailed to OTJS on April 18, 2014.
5. On May 7, 2014 Respondent filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction.

### **Conclusions of Law**

#### *Petitioner's arguments*

Petitioner claims he met IPL §57.10-8(a) as he has proven with documentation that he mailed his appeal on April 15, 2014 within the ten (10) days for his appeal.

#### *Respondent's arguments*

Respondent argues Petitioner has not met the requirements for IPL §57.10-8(a) filing his appeal. Respondent argues Petitioner's appeal should have been received by April 2, 2014 to meet the law for a timely filing.

#### *Analysis*

Respondent's Motion to Dismiss shall take priority; therefore we shall address timeliness of Petitioner's appeal. The Court agrees with Respondent's arguments. Respondent's March 19, 2014 memo gave Petitioner the timelines to file an appeal in accordance to the IPL, Chapter 57.10-8(a), "Any appeal from an action taken by the Office shall be filed with OTJS within ten (10) business days after the date of issuance of the Office's decision. Any decision not appealed within the required time frame shall be come final." The preponderance of the evidence weighs in favor of the Respondent. Therefore, Petitioner's request for an appeal is denied.

**Decision**

The Court rules in favor of Respondent's Motion to Dismiss due to untimely filing. Petitioner's request for appeal is denied.

IT IS SO ORDERED.