

# **Oneida Tribal Judicial System**

Onayote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

## **ONEIDA TRIBAL JUDICIAL SYSTEM TRIAL COURT**

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**Daniel A. King,  
Petitioner**

**Docket No: 08-TC-001**

v.

**Date: March 24, 2008**

**Oneida HRD-Benefits and  
Crawford & Company,  
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, Gerald Cornelius, and Leland Wigg-Ninham, presiding.

#### **I Background**

This case involves whether an illness known as Blastomycosis stemmed from materials located on the job site that allegedly resulted in a Worker's Compensation claim.

On January 8, 2008 Petitioner, Daniel A. King, filed a petition against Respondent, Oneida HRD-Benefits, Crawford and Company, for allegedly denying his claim for worker's compensation to cover his wages and medical expenses. Respondent asserted that Petitioner failed to provide medical support to show this was work related. Respondent further alleges Petitioner reported this incident too late. A Pre-trial was scheduled for February 7, 2008.

On January 21, 2008 Petitioner filed a Motion for Continuance due to a prior commitment. The court granted the Motion and set a new Pre-trial date for February 26, 2008.

## **II Issues**

Did Petitioner report his illness late, causing his claim to be filed untimely?

Did Petitioner's illness stem from materials located on the job site?

## **III Analysis**

Petitioner received a denial letter from Respondent on December 6, 2007, which stated that since Petitioner reported this incident to his supervisor, Jeff Mears on 11/19/07 and then reported to HRD on 12/3/07 when he returned from the hospital his claim is denied. Petitioner claims Respondent's date of reporting this claim is not correct. Petitioner asserts on October 26 and 27, 2007 he felt sick and stayed home from work. On November 2, 2007 he was seen at the Oneida Health Center and prescribed antibiotic medication. On November 8, 2007 he reported to the Oneida Health Center that the prescribed antibiotic medication was not working. On November 17, 2007 he was diagnosed with pneumonia and was admitted into the hospital on November 21, 2007. Finally on November 27, 2007 he was diagnosed with Blastomycosis and discharged on November 29, 2007. Petitioner claims his supervisor, Jeff Mears, visited him at the hospital and told Petitioner to contact Sheri Baer, Insurance Specialist at HRD on Monday (12/3/07).

### **Did Petitioner report his illness late, causing his claim to be filed untimely?**

Petitioner claims he reported his illness "blastomycosis" to his supervisor Jeff Mears and Al Baird on November 27, 2007. Respondent argues he's not sure exactly what was said in that conversation, whether Petitioner was making a worker's comp claim or just mentioning that he had blastomycosis. Respondent asserts the form was not filled out until December 3, 2007.

### **Findings of Fact**

Petitioner did not provide evidence to support his claim that he reported his illness to his supervisor. However, if this case was to proceed on the basis of late reporting he may win the argument because if he reported his illness to Jeff Mears on November 27, 2007, he should have no problem obtaining that evidence. Respondent's argument that Petitioner must state whether he is reporting a worker's comp claim or another claim fails. According to the Oneida Worker's Compensation Law, Article IX. Notices, Reports and Limitations (9-1), it simply says the

employee must “report the injury to the employee’s supervisor, manager or ... designated representative within 48 hours...” No where does it mention that an employee must report exactly the type of claim employee is reporting. Therefore, since this case is likely not to proceed, Respondent’s claim that Petitioner filed an untimely filing will not be reviewed in its entirety. This issue is moot.

**Did Petitioner’s illness stem from materials located on the job site?**

Petitioner asserts on October 24, 2007 bales of hay were placed outside the Environmental Department. Petitioner claims on October 26 and 27, 2007 he started feeling sick and stayed home with a persistent cough. On November 27, 2007 the Health Center prescribed him cough syrup. On November 8, 2007 the Health Center prescribed him cough pills. Petitioner stated on November 17, 2007 his condition worsened, he was admitted to St. Vincent’s Hospital for pneumonia and was released on November 21, 2007. On November 21, 2007 he was admitted once again at St. Vincent’s for further tests. On November 27, 2007 Petitioner’s doctor stated he had blastomycosis and discharged him on November 28, 2007. Petitioner contends he was told to call Shari Baer, Insurance Specialist at HRD on Monday, December 3, 2007 to get the paperwork going.

Petitioner pointed out his research supports that blastomycosis takes 30 to 40 days incubation period which upholds his initial contact of October 24, 2007. Petitioner claims there’s so little known about blastomycosis, it’s misdiagnosed as pneumonia. Petitioner maintains that Betty Jaffer at HRD told him it is likely that his claim will be denied because the bales of hay are gone and any dirt from the bales into the building was cleaned or vacuumed. Therefore, without the evidence needed to support this claim, forces it to be denied.

Respondent asserts that according to the doctor’s report (exhibit #2), Mr. King’s diagnosis was pulmonary blastomycosis and indicates it was not determined whether it was work related or not. According to the doctor’s report, it’s highly doubtful that Mr. King’s blastomycosis was contacted from the bales of hay unless other cases of blastomycosis were reported at the same time he was diagnosed. Respondent claims according to his research, blastomycosis is like a

fungus in the air that can be picked up from anywhere, it's not necessarily from hay bales.

### **Findings of Fact**

At the pre hearing, Mr. King was questioned; if this court was to proceed to a hearing would he be able to provide this court with evidence to support his claim. This case is about bales of hay the Petitioner alleged were contaminated and that the bales of hay directly caused Petitioner's blastomycosis. Mr. King answered;

"I feel that it's kind of stuck in a Catch 22, you can't get anybody to confirm it because nobody will. It's kind of almost like a lost cause here that you can't get no doctor to confirm it and you'll never find a doctor to say yes it is work related unless it's really specific and they find it right in a lumber mill or wherever you work."

After much debate the court decided to dismiss this case. This case can not proceed because Petitioner said it is unlikely that he can provide this court with evidence to support his claim at trial.

### **IV Decision**

This case is dismissed without prejudice.