

# ***Oneida Tribal Judicial System***

OnΛyote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

---

## **TRIAL COURT**

---

**Donald J. Denny,**

**Petitioner**

**Docket # 10-TC-188**

**v.**

**Date: January 7, 2011**

**Oneida HRD – Benefits and  
Crawford & Company**

**Respondents**

---

## **Decision**

---

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

### **I Background**

This case arises out of a workplace injury suffered by Donald Denny. Mr. Denny injured his right shoulder during his employment as a manager for the Oneida Tribe of Indians of Wisconsin.

Petitioner noticed pain in his right shoulder on February 16, 2009. Mr. Denny filed an Injury Report the same day. Mr. Denny received physical therapy from March to May, 2009. The pain did not completely go away and on October 15, 2009, Mr. Denny had arthroscopic surgery to repair his right rotator cuff. After surgery, Mr. Denny was off work for two months, then on modified duty placement for five months from December, 2009 to May 2010. Mr. Denny was cleared to return to work without restrictions on May 3, 2010. Mr. Denny's physician for his shoulder issues is Dr. Spears. The costs and medical care described up to this point are not in dispute and were presumably covered without cost to the employee.

Mr. Denny sought additional benefits in the form of treatment from Dr. Spears and compensation for a 10 % permanent partial disability due to limitations with his right shoulder. Presumably Mr. Denny's request for additional benefits came in early summer 2010.

On July 13, 2010, Respondent sent Mr. Denny to a IME, Dr. Gordon Clark. As a result of the request by Mr. Denny, the claims administrator had Mr. Denny submit to an Independent Medical Examination by Dr. Clark on July 13, 2010. Dr. Clark calculated Mr. Denny's permanent partial disability at 3%.

On August 18, 2010, Petitioner, Donald J. Denny, appealed the denial of benefits by filing an original complaint claiming Respondents, Oneida HRD-Benefits and Crawford Insurance should not have denied his claim for permanent partial disability and continued medical expense payments to Dr. Spears. Petitioner claims that on July 13, 2010, Dr. Clark concurred with Dr. Spears' assessment of 10% permanent partial disability.

Petitioner included a notice he received from Respondents on or about July 28, 2010 that denied his worker's compensation claim based on an Independent Medical Evaluation from Dr. Clark. Respondents assert Dr. Clark's medical report states Petitioner has 3% permanent partial disability compared to Petitioner's claim of 10% permanent partial disability.

## **II Analysis**

### **Findings of Fact**

On February 16, 2009 Mr. Denny experienced pain in his right shoulder in the course of his employment as a manager for the Oneida Tribe of Indians of Wisconsin. Mr. Denny reported the injury and underwent a course of treatment from February 2009 to May 2010 which included physical therapy, surgery, time off from work, placed on light duty and finally release to work without restriction on May 3, 2010.

Mr. Denny seeks to receive benefits for his workplace injury. On July 13, 2010, Mr. Denny received an IME by Dr. Clark who put Mr. Denny's permanent partial disability at 3%. Mr.

Denny's personal doctor had assessed the permanent partial disability at 10%

Mr. Denny underwent an independent medical examination by Dr. Kohli on August 5, 2009. The report concluded that Mr. Denny had a number of previous injuries to the same shoulder that likely contributed to Mr. Denny's latest injury. On November 20, 1989 the Mr. Denny was seen at the Oneida Community Health Center for an injury to his right arm as the result of carrying firewood. On July 13, 1995 Mr, Denny was seen at the Oneida Health Center for rotator cuff tendonitis in his right shoulder. On October 20, 1999, Mr. Denny saw a physical therapist through referral by Dr. Asma for pain in his right shoulder which Mr. Denny claimed was the result of the Mr. Denny throwing a baseball. The diagnosis was Right Rotator cuff tendinitis. On October 15, 2006, the Mr. Denny fell off a ladder while trimming trees and injured his right shoulder. On March 31, 2009, an MRI of the upper right extremity showed Mr. Denny had extensive degenerative changes in his right shoulder.

Mr. Denny claims Dr. Clark agreed with his doctor in the assessment of Mr. Denny's right shoulder injury resulting in a 10% permanent partial disability but Petitioner never provided any written evidence or witness testimony, other than his own, to convince this court that the injury he received on February 16, 2009 caused the 10% permanent partial disability.

In a letter dated July 28, 2010, Crawford Insurance denied further benefits as of July 13, 2010 based on the IME finding that Mr. Denny's permanent partial disability was 3%.

#### **Conclusions of Law**

The claims administrator, Respondent Crawford Claims Management Service, denied Mr. Denny's request for further benefits based on 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.

In its denial letter, Crawford states, based on the IME, that Mr. Denny's permanent partial disability is 3%. This is below the 7½ % required for a compensable injury.

The section cited by Respondent also states that the percentages “assume that the” body part at issue “was previously without disability.” Sec. 13.6-10(h). There is documentation showing that Petitioner received medical treatment several times for previous non-work related injury to his right shoulder. Mr. Denny’s history of trouble with his right shoulder goes back 20 years and includes injury from carrying firewood, throwing a baseball, tendonitis and falling from a ladder. In our view, the assumption of no previous disability means the 7 ½ % threshold for a compensable injury would be higher for Mr. Denny. Therefore, even assuming the validity of the 10% permanent partial disability by Dr. Spears, we find that these previous injuries mean there is not enough new injury to meet the required threshold for compensation under the ordinance.

### **III Decision**

Mr. Denny failed to prove his claim for 10% permanent partial disability. Mr. Denny’s claim is denied. In accordance with the Oneida Administrative Procedures Act, 1991, this decision can be appealed.