

Oneida Appeals Commission

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Trial Court

Roberta L. Kreuser

Petitioner

Docket No.05-TC-022

vs.

Date: April 20, 2005

Oneida HRD-Benefits/Crawford Insurance Co.

Respondent

Final Decision

This case has come before the Oneida Appeals Commission Trial Court. Judicial Officers Winnifred L. Thomas, Anita Barber, and Lois Powless, presiding.

I Background

The Petitioner, Roberta L. Kreuser, filed a claim under Rule 6 of the Oneida Appeals Commission Rules of Civil Procedure. Ms. Kreuser, was injured while on duty as a Fun Club supervisor at the Oneida Bingo and Casino.

On January 17, 2005 Ms. Kreuser was in the process of opening the Fun Club as she went to hang up her coat, she tripped on a door stopper and twisted her ankle and fell. Ms. Kreuser was transported to the hospital. Ms. Kreuser broke her ankle on a door stopper that was located in the middle of the floor in her office.

On February 2, 2005 Ms. Kreuser received a letter from Crawford & Company, stating "Please be advised that under the Oneida Tribe of Indians Workers Compensation Law, we must respectfully deny your claim for further benefits for the following reason. This injury does not appear to be incidental to your employment or an injury as a result of your employment."

On March 15, 2005 Ms. Kreuser received a letter from Crawford Claims Management Services, the adjusters handling the workers compensation claim on behalf of Oneida Tribe of Indians of Wisconsin. In this letter it is stated "After further review of your claim, please be advised that your workers compensation claim is now being accepted as compensable under the Oneida Tribe workers compensation law".

Petitioner argues that she used twenty-eight hours of her vacation time to supplement her income due to the denial of her claim. She would like to receive that vacation time back. Petitioner also argues, due to the injury, she had to learn how to use crutches, and because of the crutches she has had to inconvenience others for help.

II Issues

Should this employee receive the 28 hours of vacation time she is requesting?

Should this employee receive payment of ten hours per week for a period of six weeks at her full rate of pay?

III Analysis

The Crawford Insurance Company the insurer for the Oneida Tribe of Indians of Wisconsin, Worker's Compensation Law, seems to be lacking in customer service. Why? Untimely correspondence as well as incomplete investigations.

Ms. Kreuser's injury occurred on January 17, 2005 and the letter of denial dated February 2, 2005, from insurer, Crawford & Company, Workers Compensation most assuredly caused stress in the life of Ms. Kreuser. Ms. Kreuser received another letter dated March 15, 2005 from Crawford & Company Insurance apologizing to Ms. Kreuser for any inconvenience or discomfort because of the original denial of her claim. After further review of Ms. Kreuser's claim she was advised that her workers compensation claim is now being accepted as compensable under the Oneida Tribe workers compensation law.

This court can only grant what the Oneida Worker's Compensation law states can be granted.¹

There is a waiting period before benefits can be paid. The waiting period is the first three days after the accident. You do not receive compensation for these three days if you are disabled for three days or less. If you are disabled for more than fourteen days, from the date of injury, you will receive compensation for the first three days. Worker's compensation is never paid for the day of injury.

This court finds the law to be reprehensible. Since the Tribe only pays 60% of wages and the State of Wisconsin pays 66.75% the least Crawford Workers Compensation could pay is the first day of the injury. As outlined in the Oneida Worker's Compensation law under General Provisions, HRD-Benefits and Risk Management are delegated responsibility to develop and implement this program. This responsibility should mean they must continue to monitor and request amendments to the law to ensure this program is a benefit, not a burden, to the employee. Most employees would prefer going to work over receiving the lesser payment of worker's compensation or disability insurance. When an injury is caused by a work condition deemed hazardous by the insurer, the employee should not bear the burden of expenses related to their injuries. The State of WI at 66.75% has a higher rate of payment than this policy.²

¹Oneida Worker's Compensation Law 13.6-10(c) Temporary Disability
Compensation will be allowed for injuries producing only temporary total disability to work or temporary partial disability to work beginning with the eighth day of disability, except for medical benefits. **Compensation will be allowed for the first three calendar days only if the disability continues for longer than 14 days after the date of injury and results in 21 consecutive days off work or employment.** The first weekly installment of compensation for temporary disability is due 14 days after the disability begins. Not later than 15 days from the date that the first installment of compensation is due, the employer or insurer must tender to the employee or dependents all compensation due. The maximum compensation will be based on 50 weeks of average weekly wage or one year's salary whichever occurs first as further identified in subsections (d) and (e) of this section....

²Chapter 13, 13.4-0 General Provisions 13.4-1 The Oneida Tribe hereby authorizes the Risk Management Office of the Finance Division to enter into agreements to create a self-funded, self-insurance program for the Oneida Tribe operated solely for the benefit of the employees of the Oneida Tribe. The Oneida Tribe may retain the option of insuring its liability in some corporation, or association or organization authorized to transact the business of worker's compensation insurance in the State of Wisconsin. The Oneida Tribe may self-insure at its discretion and administer its program of self insurance or may contract with any private agency, business firm, or corporation to administer any part of the program. The Oneida Workers Compensation program will consist of:

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This court is sympathetic to the Petitioner in two areas. The first area is the fact that the Petitioner tried to solicit help from the gaming Employee Relations Dept. and was denied. She was also denied assistance from the office of Compliance. Petitioner appeared at the hearing representing herself. The Respondent provided documentation of the employee's work record. Showing that Ms. Kreuser has worked an average of 42.08 hours per week proving that she is a valuable employee.

The second area is the vacation time the Petitioner used to supplement her income on those first three days.³

(a) Definition of terms

(b) Benefit explanation

(1) Benefits available-Medical and Disability

(2) Benefit schedule

(3) Benefit calculation

(4) Employee responsibilities, reporting, early return to work, medical network use etc.

(c) Appeals process

13.4-2 The Risk Management Office in conjunction with the Oneida Human Resources Benefits Office is here by delegated responsibility for development of regulations to implement this program. All regulations shall conform to the requirements of the insurer of the program, or this law. Conflicts between the insurer and this law shall be resolved in favor of this law where minimum and /or maximum limits are prescribed regarding benefit levels

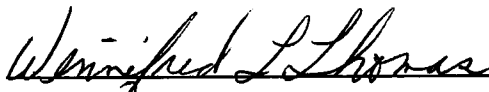
³13.4-3. A claim against the Oneida Worker Compensation program shall be the exclusive remedy against the Oneida Tribe, a Tribal entity, or Tribal employee for any claim of loss covered by the program. An individual who has made a claim against the program shall be precluded from bringing any other claim, civil action or proceeding for damages arising from the same occurrence against the Oneida Tribe, a Tribal entity, or a Tribal employee.

IV Decision

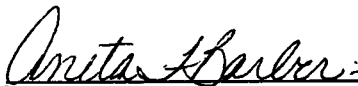
Based on the limited awards of the law and neutral counsel unavailable to employees through the tribal advocates, this hearing body wonders if in these types of cases the injured employee would be better served filing a complaint for damages rather than accepting worker's compensation.

Based on current Oneida Workers Compensation Law this court finds in favor of HRD-Benefits/Crawford Insurance Company.


By the authority vested in the Oneida Appeals Commission pursuant to Resolution 8-19-91-A of the General Tribal Council it is so held on this 20th day of 2005, in the matter of Roberta Kreuser vs Oneida HRD-Benefits/Crawford Insurance Docket No.05-TC-022 .



Winnifred L. Thomas, Lead Judicial Officer



Anita Barber, Judicial Officer



Lois Powless, Judicial Officer