

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Elaine J. Rusch
Petitioner,

v.

CASE NO: 21-TC-001

Broadspire – A Crawford Co, and
Oneida HRD – Employee Insurance,
Respondent,

DATE: February 22, 2021

ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless, III presiding.

Appearing in Person: Respondent Joshua Cottrell, Oneida Nation Director of Compensation and Benefits, Representing Broadspire and Oneida HRD.

Not appearing: Petitioner, Elaine J. Rusch.

STATEMENT OF THE CASE

Petitioner filed a Small Claims Civil Complaint along with an application to appeal a denial of a worker's compensation claim. An Initial Review hearing was held on Tuesday, February 16, 2021. At the hearing, the Respondents motioned the Court to dismiss Petitioner's complaint.

FINDING OF FACTS

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. Petitioner did not appear at an Initial Review hearing on February 16, 2021.
4. Petitioner was found to be in default for failure to appear.
5. Respondents motioned the Court to dismiss Petitioner's complaint.
6. The Respondent's motion to Dismiss was granted.

PRINCIPLE OF LAWS

Oneida Worker's Compensation Law

203.4-3. 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 claims, civil action or proceeding for damages arising from the same occurrence against the Oneida Tribe, a Tribal entity, or a Tribal employee.

Oneida Judiciary Rules of Civil Procedure

803.29-3. Plaintiff. When a party who has filed a claim fails to appear, plead or prosecute said claim as provided in this Law or elsewhere, a dismissal may be granted by the Court, on its own or on a party's motion, dismissing the claim. For purposes of this section, dismissal shall be treated as default.

ANALYSIS

The basis for the Respondent's motion to dismiss is the Petitioner's failure to appear and improperly filing the complaint.

The Nation's Rules of Civil Procedure identifies that when the Petitioning party fails to appear, plead or prosecute a dismissal may be granted by the Court on a party's motion. Here, the Petitioner failed to appear, and the Respondents motioned to dismiss. Therefore, the Respondent's motion to dismiss is granted.

Additionally, the Oneida Nation Worker's Compensation Law governs all disputes specific to worker's compensation benefits. The Petitioner sought relief due to the denial of worker's compensation benefits but filed her claim as a civil small claims complaint. As a result, because the Nation's Worker's Compensation Law governs all worker's compensation disputes, this complaint cannot be heard as a small claims complaint. Therefore, the Respondent's motion to dismiss is granted.

ORDER

1. This case is dismissed with Prejudice.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council an order was signed on February 22, 2021.

John E. Powless III, Trial Court Judge