
Appellate Court

Brian Stevens
Appellant

Docket # 03-AC-003

vs.

Date: May 30, 2003

Oneida Appeals Commission,
Ethics Board
Respondent

Decision

This case has come before the Oneida Appeals Commission. Judicial Officers Gerald L. Danforth, Wanda Webster, Pearl House, Gary Metoxen, and Pro Tem Judicial Officer Richard Ackley presiding.

I Background

On January 7, 2003, the Oneida Appeals Commission Ethics Board issued its decision upon hearing a formal ethics complaint again Appeals Commission Attorney, Brian Stevens. Attorney Stevens appealed the Board decision to the Oneida Appeals Commission.

This ethics complaint arose following a computer system audit that was conducted by the personnel from the Oneida Management Information System Department. The audit report revealed that the Appellant had accessed sexually explicit web sites during work hours at the Oneida Appeals Commission Office, utilizing its computer. Subsequently the Appeals Commission Chief Judicial Officer informed the Appellant of the audit findings and advised the Appellant that the matter would be handled in accordance with the Oneida Appeals Commission Rules of Discipline.

The matter was assigned to an Investigative Panel which entered its findings and recommendation on October 30, 2002. The Panel found that the Appellant violated the Computer Resources Acceptable Use Policy, the Personnel Policies and Procedures regarding

improper use of Tribal equipment, and the Oneida Appeals Commission Code of Ethics. The Panel recommended termination of the Appellant's employment contract as a consequence.

Based upon the arguments raised during the hearing, the Ethics Board concurred with the violations cited by the Investigative Panel, however it did not agree with the employment termination recommendation. Enumerating the reasons for its disagreement, the Ethics Board found that while the infractions cited were serious, mitigating evidence warranted reducing the severity of the sanction to something less than termination.

For the violations cited above, the Ethics Board awarded the Appellant a written warning and sanctions in the form of reimbursement of all expenses incurred by the Oneida Appeals Commission to conduct the investigation and the hearing. The expenses amount to \$3,090.91, to be paid within ninety days.

On January 20, 2003, Attorney Stevens filed a timely appeal of the Ethics Board decision to the Oneida Appeals Commission. Appellant Stevens alleges the Ethics Board acted outside the scope of its authority, that its decision is arbitrary and/or capricious, is erroneous and against the weight of the evidence, and that procedural and technical irregularities occurred during the investigation.

On April 24, 2003, A Motion to Stay Enforcement of the Ethics Board decision pending the appellate review of this case was granted.

The Appellant asks the court to reverse the decision of the Ethics Board, overturning the written warning and sanction of costs, or to overturn sanction of costs only, or to reduce the amount of any cost to be sanctioned.

II Issues

Is the decision of the Ethics Board outside the scope of its authority or otherwise unlawful?

Is the decision erroneous and against the weight of the evidence?

Is the decision arbitrary and/or capricious?

Did procedural irregularities occur?

III Analysis

Is the decision outside the scope of authority of the Ethics Board?

The Appellant asserts that the Board acted outside of its authority in its decision because there are no provisions for imposing costs in the Oneida Appeals Commission Rules of Discipline. Furthermore, that costs may only be imposed under terms of the Administrative Procedures Act or certain rules in the Rules of Civil Procedure. The appellant also claims that he is the prevailing party in this case because he persuaded the Board that the Investigative Panel conducted an improper investigation and erroneously recommended termination.

The Respondent claims that the Appellant's argument is without merit because it is based on his perception that he had a persuasive victory, but is not based on the facts of the case. The Respondent asserts that the Ethics Board had the option of terminating the employment contract, however, the Board felt that reducing the penalty, giving the Appellant a second chance, would be more equitable, and more inline with the concept of progressive discipline. The Respondent asserts the Rules of Discipline, specifically articles 7, 7-1 and 7-2, give the Board broad authority to use discretionary power to impose sanctions.

The Court finds the Appellant incorrectly claims to be the prevailing party in this case. While the Board found mitigating evidence sufficient enough to reduce the severity of punishment, its decision did not relieve the Appellant from the cited violations. The Court further finds that the Ethics Board of the Oneida Appeals Commission, in order to protect the integrity of the Judiciary, is empowered under the Rules of Discipline to award the written warning and sanction in this instance.

Is the decision erroneous and against the weight of the evidence?

The Appellant argues that the assignment of costs is contrary to existing Oneida Law as set forth in the Administrative Procedures Act. Furthermore, precedents in employment actions establish the principle that where the employer did not follow proper procedures, the disciplinary action will be overturned. Additionally, the Appellant claims that when the Board found the Panel failed to give notice of its investigation, failed to interview the Appellant, and failed to provide

an opportunity for peacemaking, it should have reversed the Panels findings. Instead, the Board issued what it considered to be appropriate disciplinary action.

The Respondent contends that the decision of the Ethics Board is based solely on the Board's authority to self regulate the Oneida Appeals Commission's discipline, which derives from the Oneida Appeals Commission's Rules of Discipline and the Appellant's employment contract. Additionally, the primary document governing the Appellant's conduct is the Oneida Appeals Commission Judicial Code of Conduct. The Respondent contends that at the stage of the complaint that the Appellant claims he was not notified, the Appellant had not yet been formally charged. Furthermore, the Respondent asserts that the Appellant did have an opportunity to speak at the Ethics Board hearing on November 21, 2002. To the Appellant's claim of not being interviewed by the Panel, the Respondent contends that the investigating procedures allow the Panel's discretion at that stage of the complaint process. Finally, in response to the peacemaking remedy, the Respondent claims that the Panel chose not to allow peacemaking due to the seriousness of the allegation.

The question of the Ethics Board's authority regarding assignment of costs has been answered under the first issue. The Court finds that the Appellant's citation of other employment cases to support his argument involved employees not subject to the Oneida Appeals Commission Code of Conduct. In that regard, the Appellant, who is subject to that Code, is held to higher standards. The Court further finds that in September 2002, when the Chief Judicial Officer met with and informed the Appellant of the MIS audit revealing potential violations, to be sufficient notice for that stage of the complaint. Regarding the Appellant's issue of not being interviewed by the Investigating Panel, the Court finds that the Panel has the discretion to designate the parties to be interviewed. Finally, the Court finds that the peacemaking process requires both parties to agree in order to use peacemaking. Once the Panel decided against peacemaking because of the seriousness of the complaint, peacemaking was then no longer an available option in this case.

Is the decision arbitrary? .

The Appellant argues that the Ethics Board’s decision refers to the Code of Ethics rather than the Code of Conduct, and furthermore that the decision contained no analysis or explanation as to why the Board agreed with the Investigative Panel’s findings.

The Respondent calls attention to the facts of the case. “Fact, the investigative Panel concluded that the Appellant did commit the following; Viewing sexually explicit Web Sites on the Internet while he was at work. Fact, the Appellant admitted to the Ethics Board that he did commit such acts.” Regarding the absence of analysis or explanation within the Boards decision, the Respondent implies that the results of the audit findings submitted by the Investigative Panel to the Ethics Board should be sufficient to satisfy an analysis requirement.

The use of the Code of Ethics instead of the Code of Conduct is considered by the Court to be a harmless administrative error that would have not changed the decision of the Board. The Court has considered the Appellant’s argument regarding insufficient technical and legal structure with regard to the analysis or explanation component within the Boards decision. The Court finds however that the audit findings submitted for the Ethics Board hearing and the Appellant’s admission to the violations cited by the Panel to be clear evidence supporting the Board’s conclusion. The Court finds that the Board’s decision is not arbitrary.

Did procedural irregularities occur?

The Appellant alleges that procedural irregularities occurred with influenced the final decision of the Board.

The questions of procedural irregularities have been answered in the preceding issues of this decision. The Court finds that the Investigative Panel and the Ethics Board conducted its respective responsibilities in accordance with existing laws, policies, procedures and rules.

IV Decision

The Appellate Court affirms in part and modifies in part the decision of the Ethics Board in this case.

The decision of the Board to issue a written warning and to award a monetary sanction against the Appellant for reimbursement of all expenses of the Oneida Appeals Commission associated with the investigation and hearing of this case is upheld.

The ninety-day payment order is modified. The parties are directed to meet to discuss an amicable payment schedule.