
Appellate Court

Lawrence Phillips,
Appellant

Docket No. 03-AC-011

v.

Oneida Bingo & Casino, Facilities,
Respondent

Date: August 19, 2003

Decision

This case has come before the Oneida Appeals Commission Appellate Court. Judicial Officers Mary Adams, Linda Cornelius, Kirby Metoxen, Marjorie Stevens, and Winnifred Thomas, presiding.

I Background

Appellant, Lawrence Phillips, is appealing the decision reached by the Oneida Personnel Commission in Larry Phillips vs. Timothy Skenandore, 03-WW-001 issued on May 1, 2003. The Appellant claims that the decision of the Oneida Personnel Commission is erroneous and against the weight of the evidence because the Oneida Personnel Commission dismissed the Appellant's case with prejudice. The Respondent, Oneida Bingo and Casino, request that the Oneida Personnel Commission's decision to dismiss with prejudice be upheld.

II Issue

1. Does the Petitioner have a right to file a Notice of Withdrawal of his grievance for a hearing with the Oneida Personnel Commission?
2. Was it proper for the Oneida Personnel Commission to dismiss the case with prejudice?

III Analysis

The Appellant claims he submitted his request to withdraw his hearing to the Oneida Personnel Commission on April 14, 2003, one day prior to the scheduled hearing. The Appellant claims the Notice of Withdrawal was accepted at the Oneida Personnel Commission by Commissioner Gollnick. Furthermore, the Appellant claims he delivered his Notice of Withdrawal to the Respondent. The Respondent does not deny receiving the Appellant's Notice of Withdrawal. The Oneida Personnel Commission does not deny receiving the Appellant's Notice of Withdrawal.

The Oneida Personnel Commission states in their decision, Larry Phillips vs. Timothy Skenandore, May 1, 2003 page 4:

"This Commission finds that holding the hearing was appropriate because of the late notice submitted by the Petitioner. The Petitioner's motion had to be formally accepted and considered by the Commission."

The Oneida Personnel Commission failed to provide this court with the law that states a

Petitioner's motion must be formally accepted and considered by the Oneida Personnel Commission. Therefore, the hearing of Larry Phillips v. Timothy Skenandore, April 15, 2003 should not have continued. A Notice of Withdrawal was stamped and accepted by the Oneida Personnel Commission prior to the hearing.

According to the packet received by the Appellant on March 27, 2003, from the Oneida Personnel Commission, the timeline for withdrawals can be made anytime. The packet does not refer to the Oneida Appeals Commission's rule for submitting motions to withdraw a case. The packet received from the Oneida Personnel Commission clearly states:

"Withdrawal: The law permits a petitioner to withdraw a request for hearing at anytime. To avoid delays and expenses involved in a hearing, we urge you to make certain that you actually want a hearing. If you do not want a hearing, notify the Personnel Commission office at once in writing."

According to the Oneida Personnel Commission's rule, a hearing request could be withdrawn anytime so long as it is prior to the hearing. The Oneida Personnel Commission's decision is erroneous to say the Appellant's Notice of Withdrawal was late. The Oneida Personnel Commission received and stamped the Notice of Withdrawal. Therefore, this case should have been dismissed without prejudice and without a hearing.

III Decision

The court orders that the Oneida Personnel Commission's decision is reversed. The Oneida Personnel Commission should have simply granted the Motion of Withdrawal and dismissed without prejudice.