

ONEIDA JUDICIARY
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TRIAL COURT

Georgianna M. Bell,
Petitioner

v.

CASE NO: 21-EMP-007
DATE: May 18, 2022

Debra Powless, Oneida Retail General Manager
Respondent

ORDER

This case came before the Oneida Trial Court, Honorable Patricia Ninham Hoeft presiding.

Appearing in person: Petitioner Georgianna Bell; Petitioner’s Attorney, Gerald L. Hill; Respondent Debra Powless; and Respondent’s Attorney, Peggy Van Gheem.

BACKGROUND

On May 11, 2022, a trial was held on Petitioner’s employment grievance to appeal the Area Manager’s decision to uphold the suspension of Petitioner from employment for two days in September 2021. Petitioner is seeking to overturn the suspension with backpay. Petitioner filed her complaint with the Trial Court on October 11, 2021. At the time of filing, Petitioner was employed as an Assistant Location Manager at the Oneida Retail Enterprise. At the October 27, 2021 pre-trial hearing, the parties entered into peacemaking, which was terminated on December 27, 2021. Additional pre-trial hearings were held on January 6, 2022, February 16, 2022, and May 2, 2022.

ISSUES

1. Did Petitioner prove by a preponderance of the evidence that one or both of the following conditions exist:
 - a. Was the decision of the Area Manager clearly against the weight of the evidence?
 - b. Were procedural irregularities exhibited during the appeal process that were harmful to Petitioner?

PRINCIPLES OF LAW

Oneida Nation Personnel Policies and Procedures Manual

Section V.D.6.a.4. The Area Manager will file a decision with the employee and the HRD Manager (or designee) and will include a reason for the decision, an explanation of the decision and the action to be taken as a result of it.

Section V.D.6.d.1. Review of the Complaint

1) The Human Resources Department shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the complaint, and the Oneida Personnel Commissioners shall review all the information submitted by the Petitioner and the Human Resources Department to determine if one or both conditions exist;

a) The decision of the Area Manager is clearly against the weight of the evidence; and/or

b) Procedural irregularities were exhibited during the appeal process that were harmful to one of the parties to the grievance.

3) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission will deny the appeal for a hearing and affirm the decision of the Area Manager.

Section V.D.2.Disciplinary Actions

V.D.2.c.1. Work Performance

V.D.2.c.1.e) Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)

Oneida Nation Rules of Civil Procedure, Chapter 803

803.4-8. Standard of Proof. All matters to be decided by the Court shall be proven by a preponderance of the evidence, unless specified otherwise.

FINDINGS

The Court finds as follows:

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 was employed at the Oneida Retail Enterprise as an Assistant Location Manager for three years.
4. Petitioner was responsible for the supervision of the following three retail stores: 54 Oneida One Stop, E & EE, and the Travel Center.
5. Petitioner's direct supervisor was Brandy Sewell.
 - a. Ms. Sewell is a Location Manager at the Oneida Retail Enterprise, a position she held for the past 1 ½ years.
6. Ms. Sewell is supervised by Ms. Kathy King.
 - a. Ms. King is the Assistant General Manager of Retail Operations, a position she held since September 2020.
7. Ms. Sewell testified employees at the Retail Enterprise are required to immediately notify their supervisor and provide documentation after learning they must be absent from work because of an illness.
8. Petitioner received instructions to quarantine and isolate at her home from two different medical providers, the Oneida Community Health Center (OHC) and the Aurora Health Center.
 - a. The OHC instructed Petitioner to begin to quarantine on August 10, 2021, to get tested for COVID-19 on August 11, 2021, and to continue to quarantine through August 12, 2021 until she is evaluated by public health.
 - i. Within 90 minutes after receiving the OHC certificate on August 10, 2021, Petitioner texted Ms. Sewell a picture of the written OHC "Certificate for Absence from Work."
 - b. On August 11, 2021, Petitioner went to the Aurora Health Center to get tested for COVID-19.
 - i. After getting tested, Petitioner received a written letter from the Aurora Health Center with instructions to quarantine from August 11, 2021 to August 25, 2021.
 - ii. On the same day Petitioner received the Aurora Health Center letter, Petitioner hand-delivered the letter to Ms. Sewell who was working at the 54 Oneida One Stop.
 - iii. When Petitioner hand-delivered the Aurora Health Center certificate to Ms. Sewell, Petitioner was on the second day of her quarantine as advised by the OHC and not wearing a mask
 - iv. Ms. Sewell verbally approved Petitioner's leave from work to quarantine and isolate at home August 11-25, 2021.

- c. On August 12, 2021, Petitioner's husband received a phone call from the OHC to inform Petitioner that her COVID-19 test was negative, her quarantine will be completed on August 12, 2021, and she may return to work on August 13, 2021. Later that day, Petitioner received an e-mail from the OHC with a written "Certificate for Return to Work or School."
- i. On August 12, 2021 and before receiving the OHC phone call that day, Petitioner sent a text to Ms. King asking Ms. King to verify that she received the Aurora Health Center letter instructing Petitioner to quarantine from August 11, 2021 to August 25, 2021 and that Petitioner would be "getting paid."
 1. Ms. King replied to Petitioner by sending a text to Petitioner. Ms. King confirmed she received the Aurora Health Center letter and informed Petitioner she is eligible for up to 80 hours of pay; in addition, Ms. King informed Petitioner she must stay at home and is not allowed on the worksite while on quarantine.
 - ii. On August 12, 2021 and after receiving the OHC phone call that day, Petitioner called Ms. Sewell asking when she can return to work because the OHC determined Petitioner's quarantine was completed on August 12, 2021 and Petitioner was eligible to return to work on August 13, 2021, while the Aurora Health Center instructed Petitioner to quarantine from August 11, 2021 to August 25, 2021.
 - iii. Ms. Sewell was working the "till" at the 54 Oneida One Stop when she received Petitioner's call during the period of 12:00 p.m. and 3:00 p.m., which can be one of the One Stop's busiest periods.
 1. Ms. Sewell was "covering for two people" when she received Petitioner's call and did not have time to determine how to respond to Petitioner's questions.
 2. Ms. Sewell directed Petitioner to call Ms. King to get instructions about what to do.
 3. Petitioner did not call Ms. King, as instructed.
 - iv. Petitioner received an e-mail from the OHC between 3:30 p.m. and 4:00 p.m. on August 12, 2021 that included the written "Return to Work" certificate.
 1. Petitioner claims she provided a copy of the Return to Work certificate in a text message to Ms. King but lacks evidence to support her claim.

2. Ms. Sewell and Ms. King did not receive a copy of the written Return to Work certificate until August 20, 2021.
9. On August 20, 2021, Ms. King was notified that Petitioner was gambling at the IMAC on August 19, 2021 when Petitioner was supposed to be isolating at home on quarantine as instructed by the Aurora Health Center. As a result, Ms. King sent a text to Petitioner to ask Petitioner if she was actually at the IMAC.
 - a. In response to the text on August 20, 2021, Petitioner called Ms. King and admitted she was at the IMAC casino.
 - b. Petitioner was scheduled to work on August 13, 14, 18, 19 and 20 but did not work those days because Petitioner was on a leave of absence from work to quarantine August 11-25, 2021 as advised by the Aurora Health Center.
10. On September 4, 2021, Petitioner was issued a disciplinary action for failing to provide her supervisors with the OHC August 12, 2021 Certificate for Return to School or Work. Petitioner was cited for violating the Oneida Personnel Policies and Procedures (OPPP) rule, V.D.2.c.1.e. Failure to provide accurate and complete information where such information is required by an authorized person. (S/T).
 - a. Petitioner was suspended for two days during the period of September 5, 2021 and September 9, 2021.
 - b. Petitioner was required to return to her employer the 16 hours of compensation she received from the COVID-19 pay fund for August 13, 2021 and August 14, 2021 which were the days she was scheduled to work but was unable to work due to having to quarantine.

ANALYSIS

This case arises out of Petitioner's two-day suspension from employment as an Assistant Location Manager at the Oneida Retail Enterprise because Petitioner failed to provide documentation from her healthcare provider to her supervisor that Petitioner can stop her quarantine and return to work. Ms. Kathy King, Assistant General Manager of Retail Operations, who served in a supervisory role to Petitioner, recused herself because she worked with Petitioner's supervisor to determine Petitioner's work schedule to accommodate her absence from work. Mr. James Petitjean, the Interim General Manager of the Retail Enterprise when Petitioner filed her complaint, replaced Ms. King to serve as the Acting Area Manager to hear this employee grievance. Petitioner appeals the Area Manager's decision to uphold the suspension and is seeking the suspension to be

removed from her employment file with backpay, including COVID-19 pay that Petitioner received as compensation while off work to quarantine and was required to return to her employer when her supervisor determined Petitioner was eligible to return to work August 13, 2021. At the time of filing the complaint, Petitioner was employed as an Assistant Location Manager at the Oneida Retail Enterprise.

In the trial phase of an employment grievance, Petitioner bears the burden to prove by a preponderance of the evidence that one or both of the following conditions exist: (1) the decision of the Area Manager is clearly against the weight of the evidence, and/or (2) procedural irregularities exhibited during the appeal process were harmful to Petitioner.

Petitioner has the sole burden to prove by a preponderance of the evidence that her supervisor was wrong in suspending her. *Deborah Thundercloud and Jacqueline Smith v. Cheyanne J. King*, 20-AC-004. To prevail by a preponderance of evidence means that a petitioner must present evidence that has “the most convincing force” and “superior evidentiary weight.” BLACK’S LAW DICTIONARY 1431 (11th ed. 2019). According to the King’s case, a petitioner meets this burden of proof by presenting physical and testimonial evidence to prove their case and the proposition that it is more likely to be true than not true that the respondent was wrong. The respondent does not have to do anything to prove or defend their case if the petitioner fails to prove their case by a preponderance of the evidence. *Id.*

First, Petitioner failed to prove by a preponderance of the evidence that the decision of the Area Manager is clearly against the weight of the evidence. This Court must answer whether Petitioner provided her supervisor with her COVID-19 status immediately after learning she was eligible to return to work and no longer required to isolate and quarantine in her home. In order for Petitioner’s supervisor to determine whether Petitioner was eligible to return to work after completing her quarantine, Petitioner was required to provide her supervisor with information or documentation of her healthcare provider’s decisions. The facts of this case are straightforward. In this case, Petitioner received three written letters with instructions about when to begin to quarantine, when to end quarantine, and when to return to work. Petitioner testified she immediately provided her supervisor, Ms. Brandy Sewell, with two of the written letters but lacked any evidence proving she sent the third letter to her supervisor.

The first letter was from the Oneida Health Center (OHC) issued to Petitioner on August 10, 2021. Petitioner was instructed to quarantine starting August 10, 2021, get tested for COVID-19 on August 11, 2021, and continue to quarantine on August 12, 2021 when she will be evaluated by public health. Petitioner testified she texted Ms. Sewell a copy of the August 10, 2021 OHC letter

within 90 minutes after receiving it. The second letter was from the Aurora Health Center issued to Petitioner on August 11, 2021. At the Aurora Health Center, Petitioner was given a test for COVID-19 and a written letter requiring Petitioner to quarantine in her home from August 11, 2021 to August 25, 2021. Petitioner testified that on August 11, 2021 after getting tested for COVID-19 at the Aurora Health Center, Petitioner drove straight to her job site at the 54 Oneida One Stop to hand-deliver the letter to Ms. Sewell. Ms. Sewell excused the time off and forwarded the letter to her supervisor, Ms. Kathy King. Finally, the third letter was from the OHC issued to Petitioner on August 12, 2021. Petitioner testified she received an e-mail with a written letter from the OHC between 3:30 p.m. and 4:00 p.m. on August 12, 2021. The letter notified Petitioner that she can end her quarantine on August 12, 2021 and return to work on August 13, 2021. Petitioner repeatedly testified she “thought she sent [the letter]” to Ms. Sewell and Ms. King. At the hearing, Petitioner testified she has no proof showing she provided this letter to Ms. Sewell or Ms. King. Both Ms. Sewell and Ms. King testified they believed Petitioner was excused to be off work to quarantine in her home August 11-25, 2021 as instructed by the Aurora Health Center. Both Ms. Sewell and Ms. King testified they did not receive the OHC August 12, 2021 letter until August 20, 2021.

Because Ms. Sewell believed Petitioner was supposed to be in her home to quarantine as instructed by the Aurora Health Center, Petitioner is accused of violating her quarantine leave by going to the IMAC casino. Petitioner testified she was at the IMAC casino on August 19, 2021. Petitioner testified she received advice from the OHC that she “can still do things” outside of her home so long as she wears a mask because her COVID-19 test was negative. Petitioner testified she was adhering to instructions given to her by the OHC on August 12, 2021 that her quarantine ended on August 12, 2021 and she is able to return to work August 13, 2021. Because Petitioner “thought” she gave the OHC August 12, 2021 letter to her supervisors on August 12, 2021, Petitioner did not call her supervisors to verify if she was off work waiting to be called in or on an excused leave to quarantine.

One reason Petitioner “thought” she gave the OHC August 12, 2021 letter to her supervisors is because Petitioner immediately called Ms. Sewell after receiving a call from the OHC notifying Petitioner her COVID-19 test was negative and she can return to work August 13, 2021. Ms. Sewell testified she received a call on August 12, 2021 from Petitioner who was asking when to return to work. Petitioner testified she called Ms. Sewell after her husband was on a call with the OHC to notify Petitioner that her COVID-19 test was negative and she will receive an e-mail and letter later on August 12, 2021 that her quarantine ends on August 12, 2021 and she can return to work August 13, 2021. Because Ms. Sewell was working “the till” during a busy time at the 54 Oneida One Stop

and covering for absent employees, Ms. Sewell was unable to respond to Petitioner's questions and instructed Petitioner to call Ms. King. Petitioner testified she did not call Ms. King. Even though Petitioner knew she was on the schedule to work August 13, 14, 18, 19 and 20, 2021 and excused from working in order to quarantine, she made no attempts to call Ms. King or Ms. Sewell during those days to notify them about the August 12, 2021 OHC letter because she "thought" she provided the letter to them.

As stated earlier, the facts in this case are straightforward. Petitioner was required to provide her supervisor with information or documentation about her COVID-19 status immediately after receiving it. At trial, Petitioner provided no evidence to prove she sent her supervisors the OHC August 12, 2021 letter stating Petitioner was able to return to work on August 13, 2021. Petitioner knew she was scheduled to work August 13, 14, 18, 19 and 20 and was not working those days because she was excused from work to quarantine. Furthermore, Petitioner made no attempts during her days off to call her supervisors to ensure they knew she was available to work starting August 13, 2021. As a result, Ms. Sewell believed Petitioner was on an excused leave of absence from work to quarantine August 11-25, 2021, as instructed by the Aurora Health Center. Because Petitioner failed to provide evidence showing she sent the OHC August 12, 2021 letter to her supervisors, Petitioner failed to prove by a preponderance of the evidence that her supervisor was wrong to believe Petitioner was supposed to be in her home to quarantine as instructed by the Aurora Health Center. Thus, Petitioner failed to show the Area Manager's decision upholding the supervisor's decision to suspend Petitioner for two days is against the weight of the evidence.

Second, Petitioner must prove by a preponderance of the evidence that Petitioner was harmed by the procedural irregularities exhibited during the appeal process. In this case, Petitioner did not identify any procedural irregularities. Petitioner's supervisor began investigating the allegation that Petitioner may have violated her quarantine leave by immediately contacting Petitioner to verify the allegations. When Ms. Sewell determined a violation occurred, she met with Petitioner to review her investigatory findings. Petitioner timely appealed her supervisor's decision to the Area Manager who issued a timely decision. The Area Manager, Mr. Petitjean, investigation included meetings with Petitioner and Ms. Sewell. Petitioner timely appealed the Area Manager's decision to the Court and the appeal was accepted for trial. Thus, Petitioner was unable to prove by a preponderance of the evidence the existence of procedural irregularities.

In conclusion, Petitioner was suspended for failing to provide documentation from the OHC to her supervisor that Petitioner was eligible to return to work August 13, 2021. As a result, Petitioner's supervisor relied on the Aurora Health Center documentation she received from Petitioner: a letter

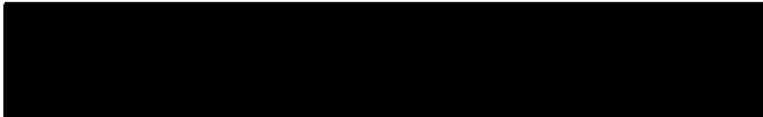
authorizing Petitioner to be absent from work to quarantine August 11-25, 2021. Petitioner violated that quarantine leave when she went to the IMAC casino on August 19, 2021. Additionally, Petitioner's supervisor determined that Petitioner was ineligible for quarantine leave after receiving the OHC August 12, 2021 letter on August 20, 2021. The OHC letter gave notice that Petitioner was able to return to work August 13, 2021 and no longer needed to quarantine. Because Petitioner's supervisor did not receive this letter until August 20, 2021, Petitioner's supervisor relied on the Aurora Health Center letter to excuse Petitioner from work to quarantine. After receiving the OHC August 12, 2021 letter, Petitioner's supervisor determined that Petitioner was ineligible to be excused from work to quarantine because the letter stated Petitioner no longer needed to quarantine after August 12, 2021. Petitioner is required to prove by a preponderance of the evidence that her supervisor was wrong to suspend because Petitioner provided her supervisor with all documentation from her healthcare providers about her COVID-19 status. Petitioner provided no evidence to support her claim that she "thought" she sent the letter to her supervisor and identified no procedural irregularities. Because Petitioner failed to prove by a preponderance of the evidence that the Area Manager's decision was against the weight of the evidence and procedural irregularities were exhibited that harmed Petitioner, the decision of the Area Manager is upheld.

ORDER

1. The decision of the Area Manager to uphold the suspension of Petitioner for two days and to return any COVID-19 leave paid to Petitioner is upheld.
2. All documents with personal identification and any confidential documents shall be sealed in order to protect anyone from annoyance, embarrassment or oppression.
3. For any such documents, the parties must turn in their copies of such documents to the Court or destroy such documents and shall not make or keep any other copies of such documents.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary Trial Court pursuant to BC Resolution 03-13-19-C, this order is signed on May 18, 2022.


Patricia Ninham Hoeft, Trial Court Judge