

**ONEIDA JUDICIARY**  
Tsi nu téshakotiya?tolétha?

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**TRIAL COURT**

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**Jeffrey A. Sot,**  
**Petitioner**

v.

**CASE NO: 23-EMP-004**

**Oneida Internal Security Department,**  
**Respondent**

**DATE: May 1, 2023**

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**FINAL ORDER**

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

**Background**

The Petitioner filed an appeal of his Area Manager's decision upholding Petitioner's termination from employment.

**Issues**

The Court must determine if one or both of the following conditions exist in order to hear the grievance:

1. Was the decision of the Area Manager clearly against the weight of the evidence?
2. Were procedural irregularities exhibited during the appeal process that were harmful to Petitioner?

**Analysis**

**DECISION OF AREA MANAGER CLEARLY AGAINST THE WEIGHT OF THE EVIDENCE?**

Petitioner did not make a claim that the decision of the Area Manager was clearly against the weight of the evidence. Therefore, the Court finds that Petitioner did not assert one of the claims necessary for the Court to hear the grievance.

**HARMFUL PROCEDURAL IRREGULARITY EXHIBITED DURING THE APPEAL PROCESS?**

The Oneida Personnel Policies and Procedures (OPPP) requires the Court to determine if procedural irregularities were exhibited during the appeal process that were *harmful* to one of the parties. Here, Petitioner alleges the following procedural irregularities:

First, Petitioner alleges the Area Manager's decision related to Petitioner's appeal is untimely. Petitioner supports this claim via *Section V.D.6.a.1.b* of the OPPP which states:

The appeal must be filed with the Area Manager and the HRD manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.

This section of the OPPP further addresses the process for employees to file the appeal of their disciplinary action to the Area Manager. Based on Petitioner's complaint, the Court interprets

Petitioner's complaint to be an allegation that the Area Manager failed to timely file her decision based on Section V.D.6.a.2 of the OPPP, which states:

The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.

Here, the Court interprets the OPPP as requiring the Area Manager to complete the investigation *and* file the decision within ten (10) working days from the receipt of the employee's appeal. This procedure also requires the Area Manager to file the decision with HRD or their designee. The Court distinguishes between filing the decision of the appeal and mailing the decision to the Petitioner.

In this case, the Area Manager acknowledged receipt of Petitioner's appeal of his termination on March 28, 2023. Ten (10) working days starts the day after the Area Manager received Petitioner's appeal, in this case, March 29, 2023. Ten (10) working days from this date is April 11, 2023. The Area Manager filed her decision regarding Petitioner's appeal of his termination to HRD on April 10, 2023. Therefore, Petitioner's allegation that the Area Manager's decision was untimely fails.

Second, Petitioner alleges that he was not afforded the opportunity to correct negative work behaviors. *Section V.D.5.* of the OPPP states that the Disciplinary Action Form will be discussed with the employee and a corrective action will be identified. On March 15, 2023, Sergeant, Keith Danforth, who is Petitioner's immediate supervisor, met and discussed the Disciplinary Action Form with Petitioner. At some point, Petitioner refused to sign the form and walked out. *Section V.D.3.c.* allows for the option to terminate an employee when an accumulation of three (3) of any combination of upheld warnings or suspensions occur within a twelve (12) month period. Here, Petitioner received three (3) upheld warnings and suspensions that were not appealed. In the event the immediate supervisor *does not* terminate the employee at this stage, it is at that point that a corrective action can be identified. If the immediate supervisor decides to terminate the employee, a corrective action is not required because the termination is the corrective action. Therefore, Petitioner's claim that he was not afforded the opportunity to correct negative work behavior fails.

The Court finds the decision of the Area Manager properly addressed each claim made by Petitioner and that there were no procedural irregularities, and the decision of the Area Manager was not clearly against the weight of the evidence. Therefore, the decision of the Area Manager must be upheld.

### Principles of Law

***Oneida Nation Personnel Policies and Procedures Manual (OPPP):***  
*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<sup>1</sup> 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 may have been harmful to one of the parties to the grievance.

2) If Oneida Personnel Commission members selected to serve as the hearing body for the complaint find one or both conditions exist, the Human Resources Department shall convene the Oneida Personnel Commission to hear 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.c.2. Attendance and Punctuality*

- b) A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)

*Section V.D.3. Accumulated Disciplinary Actions Warranting Termination (Provided that the Drug and Alcohol Free Workplace Policy shall govern disciplinary actions warranting termination for drug and alcohol related violations.)*

- a. The accumulation of three (3) upheld warning notices within any twelve (12) month period. (T)

*Section V.D.2.a. Disciplinary Actions*

a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:

- 1) Understands the reason for the disciplinary action;
- 2) Understands the expected work performance in light of the disciplinary action;
- 3) Understands the consequences of continued unacceptable behavior.

*Section V.D.5.c. Disciplinary Procedure*

The following procedure shall be adhered to whenever disciplinary action is taken

- b. The form will be discussed with the employee and a corrective action will be identified.

*Section V.D.6.a.1.b, Grievance*

- a. For all disciplinary actions, regardless of severity: 1) The employee (petitioner) must file an appeal in writing.

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<sup>1</sup> The Court is exercising jurisdiction over employee grievances in accordance with Oneida Business Committee Resolution 03-13-19-C. This resolution gives the Court authority to hear employee grievances until the OPC is ready to resume it's hearing authority. To date, the OPC is not yet ready to resume it's hearing authority.

*V.D.6.a.2, Grievance*

2) The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.

**Findings**

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. Petitioner was terminated from employment on March 15, 2023, for violating the following sections of the OPPP:
  - a. Attendance and Punctuality, and
  - b. Accumulated Disciplinary Actions.
4. Petitioner timely appealed the Area Manager's decision upholding his termination to this Court.
5. The Area Manager's decision was not clearly against the weight of evidence.
6. Procedural irregularities were not exhibited during the appeal process.

**Order**

1. The decision of the Area Manager is UPHELD.

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 1, 2023.

  
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John E. Powless III, Trial Court Judge