

COURT OF APPEALS

Kyle Wisneski,
Appellant,

Case Number: 26-AC-001

v.

Date: April 6, 2026

Mark W. Powless, Tsyunhehkwa
Respondent.

INITIAL REVIEW DECISION

This matter has come before Court of Appeal Judges Diane House, Michele Doxtator, and Chief Appellate Judge Patricia Garvey.

BACKGROUND

The Appellant, Kyle Wisneski (hereinafter Wisneski), was terminated from his position as Tsyunhehkwa Manager on July 18, 2025, for a violation of the Oneida Personnel Policies and Procedures, V.D.2.C.1.a, insubordination (including disobedience) or failure/refusal to carry out assignments or instructions (W/S/T). On February 6, 2026, the Oneida Trial Court issued its decision wherein it upheld Wisneski's termination. On March 6, 2026, Wisneski filed a Notice of Appeal with this Court.

ANALYSIS

In his appeal, Wisneski alleges that the Trial Court committed a harmful error when it held that information in the Investigative Summary attachment was to be considered part of the Disciplinary Action Form issued by his supervisor. More specifically, Wisneski argues that a procedural irregularity occurred when the supervisor did not completely identify all alleged procedural violations on the Disciplinary Action form. He compares the listing of a sole violation of insubordination on the Disciplinary Action form to those listed within the Investigative Summary attachment wherein the supervisor listed three procedural violations (insubordination, negligence, and failure to exercise proper judgment) as justification for the termination.

Upon appeal and after confirmation of this procedural error, the Area Manager determined that the omission of the two additional infractions on the Disciplinary Action Form was a harmless error because the infraction of insubordination in this instance was sufficient to justify termination. The Trial Court also concluded that this omission on the Disciplinary Action form was a harmless error as Part 2 permits the inclusion of additional documents to support the action taken and such documents identify the alleged violations. We agree with the Trial Court's findings on this issue.

The Oneida Judiciary Law §801.8-3(a)(1) states that findings of fact may only be rejected where the Appellate Court determines they are "clearly erroneous." This means that when reviewing the Trial Court decision, we apply a clearly erroneous standard to factual findings and a de novo standard to legal issues. We also will follow the requirement of §801.8-3(a) in that we "shall not substitute [our] judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body." This means we give great deference to findings made by the Trial Court. This is based upon the proposition that the trial judge heard the testimony of both parties and will have the best understanding of the evidence presented. "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact" (*Skolaski v Ninham*, 15-AC-008, p.4; citing *Stevenson v Stevenson*, 2009 WI App 29, ¶ 14). Wisneski is bringing forward the same issue in this appeal-an issue that the Trial Court addressed. We will not substitute our judgment for that of the Trial Court. As result, we agree with the Trial Court and find this omission on the Disciplinary Action form a harmless error.

Wisneski further alleges that procedural irregularities exist because his supervisor failed to meet with him prior to issuing the termination disciplinary action. The Trial Court determined that the supervisor provided sufficient evidence substantiating his position that several attempts to meet with Wisneski were made; however, it was Wisneski who repeatedly failed to attend any of these scheduled meetings. Based upon evidence presented by both parties, the Trial Court held that Wisneski failed to meet his burden of proof on this issue. In this appeal, Wisneski is again bringing forward the procedural irregularity of not meeting with him prior to issuing the termination as grounds for reversal. However, he alleges the same justifications for missing two of the scheduled meetings (the Tribe shutting down early and a reported illness) that the Trial Court already considered. After hearing the evidence presented by both parties, the Trial Court determined that

Wisneski failed to meet his burden of proof on this issue. We agree with this finding as we will not substitute our judgment on this issue.

DECISION

After reviewing the information contained in the Notice of Appeal and the decision of the Oneida Trial Court as the original hearing body, it is determined that Wisneski has not sufficiently alleged that the decision:

1. Violated applicable provisions of the Constitution;
2. Violated provisions, substantive or procedural, of applicable Tribal law or applicable federal law;
3. Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Is not supported by the substantial evidence on the record taken as a whole.

Wisneski has failed to state the legal grounds for his appeal under the Oneida Rules of Appellate Procedure §805.5-2(c)(3). Based upon the evidence presented at trial, the Trial Court found that Wisneski did not meet his burden of proof that he was harmed by alleged procedural irregularities that occurred in the disciplinary process that led to his termination. We agree with the Trial Court on both issues.

For the reasons stated above, this appeal is DENIED for review.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, the appeal is **DENIED** for review. Dated this 6th day of April 2026, in the matter of Case No. 26-AC-001, *Kyle Wisneski v. Mark W. Powless, Tsyunhehkwa*.

It is so ordered.