

IN THE SUPREME COURT OF THE CHEROKEE NATION

CARA HAWLEY,

Appellant,

v.

CHEROKEE NATION,

Appellee.

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CV-2018-05
Emp.Ad.Appeal No. 17-004

CHEROKEE NATION
SUPREME COURT
RENDALL BIRD, COURT CLERK

2018 MAY -2 PM 3:38

FILED

APPEAL FROM ADVERSE RULING OF THE
EMPLOYEES APPEAL REVIEW PANEL

COMES NOW Appellant Cara Hawley (“Hawley”) and appeals an adverse decision sustaining her termination by the Cherokee Nation Employee Appeal Review Tribunal (“EARP”). The EARP, over the Appellant’s continuous objections, erroneously denied her due process by denying her the opportunity to adequately conduct discovery, consult experts, and conduct depositions, refused to issue subpoenas for witnesses and prevented them from testifying on her behalf, and allowed hearsay statements of her accuser into evidence and denied her the right to confront her accuser or to cross-examine him.

I. INTRODUCTION

The Cherokee Nation Constitution Article XII grants “for cause” tenure to an employee employed over one year and requires Cherokee Nation to provide pre-termination due process before the employee is removed from employment. This “for cause” tenure is a vested property right. This appeal is being made to the Cherokee Nation Supreme Court under Title 51 CNCA §1024, as Appellant’s original appeal was filed on December 5, 2017. The Employee Access to Justice Act, which was effective December 13, 2017.

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II. PARTIES

1. The Appellant is Cara Hawley, a former employee of Cherokee Nation who worked at a Cherokee Nation AMO Health Center in Salina, Oklahoma. She is a citizen of the Cherokee Nation.
2. The Appellee is Cherokee Nation.

III. JURISDICTION

3. This Court has jurisdiction pursuant to the Cherokee Nation Constitution Article III Section 1, which provides that: “The judicial process of the Cherokee Nation shall be open to every person and entity within the jurisdiction of the Cherokee Nation. Speedy and certain remedy, and equal protection, shall be afforded under the laws of the Cherokee Nation.” Prior to termination of her employment, Appellant was a regular full-time employee of the Cherokee Nation for more than one year and entitled to Constitutional due process.

4. The District Court serves as an appellate court *de novo* reviewing decisions of the EARP under The Employee Access to Justice Act.

IV. FACTS

5. Appellant was employed by Cherokee Nation AMO Health Center in Salina, Oklahoma since May 24, 2010, and was employed in a position for more than one year at the time of her termination.

6. On August 23, 2017, Starr Lynch, Patient Services Advocate, filed a report indicating that David Jumper, the father of Appellant’s child, had complained that she was inappropriately accessing his medical records.

7. Appellant filed two Appeal Letters with Cherokee Nation Human Resources, one on October 12, 2017 and another on October 27, 2017, explaining that Mr. Jumper had asked his home health nurse to have Appellant’s name removed from his file as his emergency contact, and that she had accessed his file as part of her job duties to comply with that request. She also stated that she had accessed Mr. Jumper’s file to help him complete his Social Security application, which she had

done for many clients of the clinic and which was part of her job duties. She explained that she believed Mr. Jumper had made the complaint to Lynch because he was angry at Appellant for filing a Paternity Action against him and requesting child support for their child.

8. On November 3, 2017, Appellant was terminated pursuant to Cherokee Nation Human Resources Policies and Procedures, Chapter III Employee Conduct, Section E, Progressive Discipline Process (Due Process), Subsection E, Extreme Misconduct, (1)(e) and 1(cc) pertaining to the use of Cherokee Nation computers against Cherokee Nation policy committed during working time. The basis for her termination was that she had inappropriately accessed the medical records of David Jumper (“Jumper”), the father of her child.

9. On January 8, 2018 the Appeal Tribunal of the Oklahoma Employment Security Commission found that Appellant had been discharged, but not for misconduct connected with the work, and allowing Appellant unemployment benefits which had previously been denied.

10. Appellant also appealed Cherokee Nation’s termination decision to the Administrative Appeals Board, and a hearing was set for January 4, 2018. Appellant failed to appear at that hearing because she had not received notice and was unaware of it. The hearing was continued to January 24, 2018, at which time the Appellant requested additional time obtain counsel so that she could adequately prepare her case, which was continued, over the objection of Cherokee Nation, to March 28, 2018. Appellant was not in a financial position to hire counsel until shortly before the hearing, as her termination for extreme misconduct has made it impossible for her to obtain employment in her field.

11. On March 22, 2018 Appellant’s newly hired counsel Gayle E. McNamara filed an Entry of Appearance, Motion for Continuance, and Motion for Discovery, indicating the motion was not made for the purpose of delay, but because she required additional time to determine if deposition or further discovery should be requested, and to properly present her case before the Appeals Board. She also made a motion for issuance of subpoenas, which was also denied.

