

IN THE SUPREME COURT OF THE CHEROKEE NATION

IN THE MATTER OF THE APPEAL OF
CARA HAWLEY

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Case No. SC-2018-05

**RESPONSE TO APPEAL FROM ADVERSE RULING OF THE EMPLOYEE APPEAL
REVIEW PANEL (PETITION IN ERROR)**

X RESPONSE TO PETITION IN ERROR

I. TRIAL COURT HISTORY

COURT/ COMMISSION: Employee Administrative Appeals Board

CASE NO.: Employee. Ad. Appeal No. 17-004

JUDGE/ HEARING OFFICER: En Banc

NATURE OF CASE: Employee Appeal regarding employment/cessation of employment

NAME OF PARTY(IES) FILING THIS RESPONSE TO PETITION IN ERROR: Cherokee
Nation through the Office of the Attorney General

THE APPEAL IS BROUGHT FROM: (check one)

- Judgment, Decree or Final order of the District Court
- Appeal from order granting summary judgment or motion to dismiss
- Final Order of Other Tribunal, Commission, or Hearing Board
- Interlocutory Order Appealable by right
- Other

II. TIMELINESS OF APPEAL

1. Date judgment, decree, or order appealed was filed: April 3, 2018
2. Does the judgment or order on appeal dispose of *all* claims by and against *all* parties?
Yes
3. Were any post-trial motions filed? No

2018 MAY 31 PM 2:12
CHEROKEE NATION
SUPREME COURT
GENERAL COUNCIL CLERK

FILED

III. SETTLEMENT CONFERENCE

Is the appellee willing to participate in a Settlement Conference? Yes

IV. SUMMARY OF CASE – EXHIBIT “A”

V. RECORD ON APPEAL

A Transcript will be ordered.

Per Supreme Court Rule 56, Cherokee Nation requests that the Appellant “must advance the costs of the transcripts ordered by any party relating to the appeal of the appellant.”

VI. NAME OF COUNSEL OR PARTY, IF *PRO SE*

ATTORNEY FOR APPELLANT

Name: Ms. Gayle E. McNamara

CNBA: 0416

Cherokee County Affordable Law

816 S. College Ave.

Tahlequah, OK 74464

gemcnamara@copper.net

Tel: 918-458-5040

ATTORNEYS FOR APPELLEE

Name: John C. Young

CNBA: 479

Name: Paiten Qualls

CNBA: 672

Firm: Office of Attorney General, Cherokee Nation

Address: P.O. Box 948

Tahlequah, Ok 74465-0948

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918-458-6142 (fax)

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Verified by: /s/ John C. Young

Name: John C. Young
CNBA: 479
Office of Attorney General, Cherokee Nation
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Tahlequah, Ok 74465-0948
918-453-5000, Ext. 5726
918-458-6142 (fax)
john-young@cherokee.org

VII. CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Response to Appeal From Adverse Ruling of the Employee Appeal Review Panel (Petition in Error) was mailed and/or emailed this May 31, 2018 to the following:

Ms. Gayle E. McNamara
Cherokee County Affordable Law
816 S. College Ave.
Tahlequah, OK 74464
gemcnamara@copper.net
Tel: 918-458-5040

I further certify that a copy of the Response to Petition in Error was mailed to, or filed in, the office of the Court Clerk of the Cherokee Nation Supreme Court on the May 31, 2018.

/s/ John C. Young
John C. Young

IN THE SUPREME COURT OF THE CHEROKEE NATION

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Case No. SC-2018-05

SUMMARY OF THE CASE

Appellant Cara Hawley appeals an order of the Employee Administrative Appeals Board (“EAAB”) affirming her termination from the position of “Medical Records Clerk III”. Following a hearing, the EAAB found that the Appellant had been a full-time employee of the Cherokee Nation for more than one (1) year and was entitled to constitutional due process. Prior to accepting her position as a Medical Records Clerk III, on March 8, 2016, the Appellant signed a “Statement of Confidentiality” which provided in part: “I understand that viewing confidential information, whether written or electronic, except as required by my job duties”. 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, (I)(e) and J(cc) pertaining to the use of Cherokee Nation computers against Cherokee Nation policy committed during working time. On March 22, 2018, Appellant's counsel filed a combined Entry of Appearance, Motion for Continuance, Motion for Discovery, and Motion for Issuance of Subpoenas. The Board issued an Order on March 26, 2018, denying the Motion for Continuance since the hearing had been continued twice previously. The first continuance was due to the Appellant's possible lack of notice of the first scheduled hearing. The second continuance was granted at Appellant's request in order to retain representation. Additionally, Appellant was advised that the matter would not be continued

