

RECEIVED
U.S. COURT OF APPEALS
10TH CIRCUIT

**UNITED STATES COURT OF APPEALS 2015 SEP -2 AM 11: 03
FOR THE TENTH CIRCUIT**

Sherri Sanders

Plaintiff/Petitioner - Appellant,

Case No. 15 - 6116

v.

Appellant's Opening Brief

Gov. Bill Anoatubby,
Wayne Scribner,
Renee Sweet,
Terry Davis,
Jackie Williams

Defendants/Respondents -Appellees.

NOTICE AND INSTRUCTIONS

If you proceed on appeal pro se, the court will accept a properly completed Form A-12 in lieu of a formal brief. This form is intended to guide you in presenting your appellate issues and arguments to the court. If you need more space, additional pages may be attached. A short statement of each issue presented for review should precede your argument. Citations to legal authority may also be included. This brief should fully set forth all of the arguments that you wish the court to consider in connection with this case.

New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court. A copy of the completed form must be served on all opposing counsel and on all unrepresented parties and a proper certificate of service furnished to this court. A form certificate is attached.

APPELLANT/PETITIONER'S OPENING BRIEF

1. Statement of the Case: (This should be a brief summary of the proceedings in the district court.)

During the 5 years that Plaintiff worked for the Chickasaw Nation Division of Housing, Plaintiff was treated unfairly and with bias by her superiors, resulting in her wrongful termination. Evidence and witnesses will be presented that will clearly affirm that supervisors created a hostile work environment, often using intimidating and threatening tactics, acted outside the scope of their authority, and did not follow policies and procedures. Plaintiff was not allowed due process or the right to utilize the chain of command. Secondly, Plaintiff's homeowner's application was handled differently than other Chickasaw applicants, and evidence indicates that this was due to abuse of authority and retaliation related to her employment by superiors named in this lawsuit. This discrimination shows non-compliance with the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Because the Chickasaw Nation receives federal funding in the Indian Housing Block Grant, jurisdiction is granted in the Federal Court because of Title VI of the Civil Rights Act of 1964, which was enacted to prevent intentional discrimination in programs and activities receiving federal financial assistance. The US Department of Justice states, "Aggrieved individuals may file administrative complaints with the federal agency that provides funds to recipient or the individuals may file suit for appropriate relief in Federal Court. Title VI, Appendix A to Subpart A of Part 17 - "Federal financial assistance subject to part 17 includes: VI. Indian Affairs (a) Grants and loans of Federal funds." Furthermore, the Ex Parte Young Doctrine applies to tribal officials as a waiver of tribal immunity in Federal Court when tribal officials have acted outside the scope of their official capacities, or in violation of federal law. The judge in the original lawsuit denied Plaintiff the right to amend her complaint once, which is granted by Civil Procedure Rule 15, Amended and Supplemental Pleadings, which states, "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served and prior to entry of an order of dismissal." The US District Court for the Western District of Oklahoma sent the July Status and Scheduling Conference Docket to Plaintiff stating, "The parties shall confer and prepare a Joint Status Report and Discovery Plan to be filed by 30June15, and she was requested to appear before the judge on 07July15. Shortly after receiving this notice, Plaintiff was contacted by Defendants' attorneys asking Plaintiff, "How much do you want" in reference to monetary relief requested, to which Plaintiff referred the attorney to information detailed in the lawsuit. After this conversation and *before the court's deadline of 30June15 to submit a discovery plan*, the Plaintiff received notice from the Federal Court of a motion to dismiss the lawsuit.

2. Statement of Facts Relevant to the Issues Presented for Review.

There are actually three main issues to this case:

1. Superiors abuse of authority
2. Improper processing of Plaintiff's homeowners' application
3. Wrongful termination without explanation given

3. Statement of Issues.

a. First Issue: Abuse of Authority by Superiors:

Plaintiff experienced harassment, discrimination, and abuse of power by superiors during her 5 years of employment in the Duncan office of the Chickasaw Nation Housing Administration. There were instances, which at first may have seemed minor, but the un-professionalism and bullying became a constant, ongoing issue. Plaintiff's experiences included: a.) Plaintiff was denied leave time after Jackie Williams had already approved the leave by email. b.) Plaintiff was given a written reprimand for not attending the Governor's annual festival even though for several days she had notified Jackie Williams that her car was being repaired and she had no other means to get to the festival 2 hours from her home. Plaintiff had even requested to use the government car, requested to ride with co-workers (who were allowed to take their government vehicle), or to be excused from the festival. This shows favoritism. c.) Plaintiff had worked in the Duncan office of the Chickasaw Nation Housing Administration for 3 years, receiving excellent annual evaluations and no complaints. But when Plaintiff answered the phone incorrectly ONE time, Jackie Williams and Terry Davis required her to take 8 hours of customer service training, and someone was ordered to drive from Ada to Duncan to observe Plaintiff's job performance for an entire day. d.) Anytime Plaintiff requested time off for annual leave, Jackie Williams would ask many personal questions such as "Why do you need time off?" "Where are you going and is it necessary?" e.) Jackie Williams constantly referred to Plaintiff as "Blondie" or "The Blonde" instead of by name. Offensive comments were even made about Plaintiff's personal life and the fact that she has a girlfriend, which again shows supervisor's abuse of power and discrimination. f.) Jackie Williams, Renee Sweet, and an HR Generalist from Housing showed up at Plaintiff's office one day to have an "informal counseling session" about a leave request Plaintiff had submitted by email. According to policies and procedures, an "informal counseling session" is to be between supervisor and employee only, but this meeting was clearly an intimidation tactic in an attempt to outnumber Plaintiff. At one point, Renee Sweet, who held the position of HR Director, even stood up, pointed her finger in Plaintiff's face, and yelled at her, telling Plaintiff she would not be allowed to speak to Mr. Scribner about the issues she had been dealing with. Human Resource personnel are supposed to be employee advocates, to insure policies, procedures, and employee rights are recognized. Clearly, Renee Sweet was attempting to intimidate Plaintiff rather than advocate for her rights. g.) Plaintiff eventually filed a formal grievance against Jackie Williams and Renee Sweet with Terry Davis, who should have been the

next in line in Plaintiff's chain of command. According to policy, the grievance meeting should have been attended only by Terry Davis and the Plaintiff. However, Terry Davis showed up at Plaintiff's office with Jackie Williams and Renee Sweet, and it was actually Renee Sweet, one of the individuals named in the grievance, who conducted the meeting! Plaintiff was not allowed to record the discussion, and the witness she had asked to be present was actually locked outside the building, again in an attempt to overpower and intimidate the Plaintiff!

b. Second Issue: Improper processing of Plaintiff's homeowners' application:

Plaintiff had been filling out a homeowners' application within the Chickasaw Nation Housing Administration for 5 years. Plaintiff has copies of the application from 2012 and 2013 that clearly ask, "Who will be living in the home with you?" Even though her application was for herself, her daughter, and her 3 grandchildren together, Plaintiff's application was continuously placed in the "single" file instead of the "family" file, but each time she questioned why this was happening, she received vague answers. Plaintiff's daughter, Heather Turner, finally called the Governor's office, in an effort to get answers and resolution to why their application was being mishandled. Her daughter requested a meeting with Gov. Anoatubby, but was told *that Plaintiff needed to call directly since she was listed as the head of household*. When Plaintiff contacted the Governor's office as requested, she clearly stated up front that she was calling as a Chickasaw citizen about her homeowner's application and not as an employee. Plaintiff was asked several very direct questions by Ms. Tammy Gray, assistant to Gov. Anoatubby, who asked why Plaintiff thought her application was being delayed and placed in the wrong category. Plaintiff stated she felt it had to do with the harassment issues and previous grievance she had filed. Ms. Gray stated that Plaintiff should talk to her "chain of command," but Plaintiff replied that she had already done so. Ms. Gray transferred the call to Ms. Jones, Secretary Wayne Scribner's assistant, who set up a meeting with Mr. Scribner. On 04August, Plaintiff and her daughter went to Ada to meet with Mr. Scribner, to inform him of the various issues that had been going on, and the fact that Kristen MacCollister had been told by Jackie Williams that she "could not process Plaintiff's application with her and her daughter and grandkids on it." But when Ms. Jones came to get Plaintiff for the meeting, she informed Plaintiff's daughter that she was not allowed to attend the meeting. Heather questioned why, since she was the one who had called to request a meeting in the first place, but she was

simply told she would not be allowed in. In the meeting, Plaintiff asked Mr. Scribner why her daughter was told to wait in the waiting room, but he again simply stated she would not be allowed to attend. This action again exemplifies an abuse of authority in that Heather was denied her rights as a Chickasaw citizen to be present in a meeting that she had requested. Plaintiff then showed him 2 original homeowners' applications that asked, "Who will be living in the home with you?" Mr. Scribner said, "That is a matter of interpretation." He gave no further explanation or advice, apparently unfairly treating her as an employee rather than a Chickasaw citizen. Plaintiff asked to be able to speak with the Governor, so Mr. Scribner said he would set up a meeting with him, and then he left the room. Renee Sweet, Terry Davis, and Candice Wheeler came in and Terry began reading a Personal Improvement Plan that said Plaintiff was receiving a second written reprimand, but Plaintiff refused to sign it because she had never received a first written reprimand, so once again, policy and procedure was not being followed. Plaintiff stated that she had only called the Governor's office as requested and as a citizen, not having to do with her employment, and that she would not sign a statement that was false. Ms. Wheeler later contacted her to inform Plaintiff that she was correct, so it was changed to a first written reprimand. As of the present time, the application has still not been placed in the correct category, and a meeting still has not been set up with Governor Anoatubby.

c. Third issue: Wrongful termination without explanation

On 22Sept14, Shawn Clemens and Renee Sweet went to Plaintiff's office and told her she would be on leave with pay for 3 days while Mr. Clemens conducted an internal investigation. Plaintiff told him he needed to also contact her daughter, and gave him Heather's name and phone number. The following day, 23Sep14, Mr. Clemens asked Plaintiff to meet him at the Duncan office, along with Renee Sweet. At the meeting, Mr. Clemens said they were there to end Plaintiff's employment with the Chickasaw Nation "because of Plaintiff's behavior." No other explanation was given, which again does not follow employment policy. It was only when Plaintiff received a statement from the unemployment office stating, "You were discharged from Chickasaw Nation Division of Housing after you spoke with someone in the Governor's office about being harassed. You indicated it had been ongoing for four years. Misconduct has not been established." Plaintiff has rights as a Chickasaw citizen, and should have been allowed to exercise those rights, and have her homeowners' application processed correctly, without any conflict relating to her employment. Employees' Code of the Chickasaw Nation page 12 states that a required notice must be given: 1. Before any regular employee may be demoted involuntarily, suspended without pay, or discharged, the

Executive Department shall provide the employee with: A) A statement of the specific acts or omissions that are the causes, or reasons, for the proposed actions; and B) An explanation of tribe's evidence; and C) An opportunity to present reasons why the proposed action is improper and should not take place. The wrongful termination with no valid reasons given once again demonstrates superiors acting outside the scope of their authority.

4. Do you think the district court applied the wrong law? If so, what law do you want applied? District court should have allowed Plaintiff to amend her complaint once for just cause. That would have given the district court jurisdiction for this case under Title VI of the Civil Rights Act of 1964, which protects people from discrimination in programs or activities that receive federal financial assistance. The Motion to Amend Complaint, which was signed and submitted to the district court on 02Apr15, is attached.

5. Did the district court incorrectly decide the facts? If so, what facts? District court failed to allow Plaintiff to finish the discovery phase and meet with the defendants' lawyers, which would have clearly showed that she has proof and witnesses to substantiate her claims.

6. Did the district court fail to consider important grounds for relief? If so, what grounds? Plaintiff was only asking for her liberties that were taken from her when she was terminated and denied employment for the 15 years she had planned to work for Chickasaw Nation Housing Administration until retirement, which would have totaled at least \$870,000 in earnings and benefits. Plaintiff had resigned herself to the fact that, until she could get someone to listen and make changes in administration, she would have to tolerate the work place bullying in order to maintain her job. Plaintiff has experienced medical and emotional conditions caused by the constant harassment and bullying by superiors, as well as the wrongful termination she ultimately endured.

7. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what? The district court never gave Plaintiff the opportunity to show evidence and call witnesses to substantiate claims of superiors' wrongdoings.

8. What action do you want this court to take in your case? Plaintiff requests that the Appellant Court allow her case to go to trial by jury, and let a jury of her peers hear testimony by witnesses that can confirm that there are many injustices and instances of abuse of power within the Chickasaw Nation that need to be addressed, and offenders need to be reprimanded and held accountable for their actions.

9. Do you think the court should hear oral arguments in this case? If so, why? Absolutely! Several witnesses can be called who will confirm that Plaintiff was often treated unfairly by superiors, her homeowners' application was mishandled seemingly due to retaliation, and Plaintiff's employment was terminated for no just reason.

8-31-2015
Date

Shirley K. Sanders
Signature

CERTIFICATE OF SERVICE

I hereby certify that on 8-31-2015 I served a copy of
 (date)
 the Appellant/Petitioner's Opening Brief to Michael BUIRAGE + Patricia A SAWYER
 _____, at 1215 Classen Dr.
 (Opposing Party or Attorney)
Oklahoma City, OK 73103, the last known address/email
 address, by Fed Ex.
 (state method of service)

8-31-2015 Date
Shirley K Sanders Signature

CERTIFICATE OF COMPLIANCE

I certify that the total number of pages I am submitting as my Appellant/Petitioner's Opening Brief is 30 pages or less or alternatively, if the total number of pages exceeds 30, I certify that I have counted the number of words and the total is 2775, which is less than 14,000. I understand that if my Appellant/Petitioner's Opening Brief exceeds 14,000 words, my brief may be stricken and the appeal dismissed.

8-31-2015 Date
Shirley K Sanders Signature

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

Sherri Sanders

Plaintiff,

v.

Case No. CIV-15-0089-M

Chickasaw Nation Community Services,
Division of Housing,

Bill Anoatubby, Wayne Scribner, Renee
Sweet, Jackie Williams, & Terry Davis

Defendants.

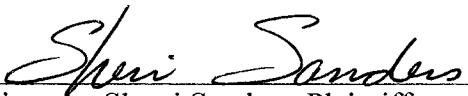
MOTION TO AMEND COMPLAINT:

Your Honor,

Pursuant to Federal Rules of Civil Procedure 15, Plaintiff seeks to amend her original complaint, which listed only Title VII as the basis of jurisdiction in federal court for her complaint. However, Title VI of the Civil Rights Act of 1964 was enacted “to prevent intentional discrimination in programs and activities receiving federal financial assistance.” All of the Chickasaw programs receive federal financial assistance, which would apply to the Plaintiff's homeowner's application.

Plaintiff would also like to add the Ex parte Young Doctrine to her complaint, which proves that officials and employees within a Native American tribe can be sued individually when he or she has acted outside the scope of his or her authority. This is proven in the way Wayne Scribner, Renee Sweet, Jackie Williams, and Terry Davis did not adhere to Chickasaw policies regarding Plaintiff's employment, and in the way all 4 of them were aware that the Plaintiff's homeowner's application was being mishandled. The Defendants were concerned that

Plaintiff was going to inform the governor of wrong-doing, so Plaintiff's employment was terminated before she was ever allowed to speak to the governor. Defendants knew that they had broken several policies and procedures and their jobs could be in jeopardy. Plaintiff can provide witnesses who will attest to the biased treatment that Plaintiff experienced.


Signed – Sherri Sanders, Plaintiff


Date

SS# 446-66-8660 LOFP 16-01 EFFECTIVE 09/21/2014 PROGRAM UI

OESC MAIL SUPPORT, P.O. BOX 52006, OKLAHOMA CITY, OK 73152-2006
FAX #(405)962-7524 E-MAIL ADDRESS: UI.APPEALS@OESC.STATE.OK.US

THIS DETERMINATION WAS MAILED ON 10/10/2014 TO THE CLAIMANT AND/OR THE
EMPLOYER AT THEIR RESPECTIVE ADDRESSES SHOWN ON THIS DETERMINATION
CLMT PH # 580-736-0973

CLAIMANT

EMPLOYER

SHERRI K SANDERS
6319 N.W. CHEYENNE AVE.
LAWTON OK 73505

THE APPLICABLE SECTION OF THE OKLAHOMA SECURITY ACT IS SECTION 2-406 ;
THE APPLICABLE SECTION OF THE EMPLOYMENT SECURITY ACT OF 1980 IS 40 O.S.
SECTION 2-406 DISCHARGE FOR MISCONDUCT. THIS LAW CHANGED ON NOVEMBER 1,
2013, SO THE STATUTE THAT WAS IN EFFECT ON THE DATE OF THE JOB SEPARATION
APPLIES TO THIS CASE. THE FULL TEXT OF BOTH PROVISIONS CAN BE FOUND AT
[HTTP://WWW.OESC.STATE.OK.US/LMI/SECTION-2-406.HTML](http://www.oesc.state.ok.us/lmi/section-2-406.html)

YOU ARE ALLOWED BENEFITS EFFECTIVE 09/21/2014. BASIS FOR DETERMINATION-

YOU WERE DISCHARGED FROM CHICKASAW NATION DIVISION OF HOUSING AFTER YOU
SPOKE WITH SOMEONE IN THE GOVERNOR'S OFFICE ABOUT BEING HARASSED. YOU
INDICATED IT HAD BEEN ONGOING FOR FOUR YEARS. MISCONDUCT HAS NOT BEEN
ESTABLISHED.

IF YOU DISAGREE WITH THIS DETERMINATION YOU MAY FILE AN APPEAL WITHIN TEN
(10)DAYS OF THE MAILING DATE OF THIS DETERMINATION. YOU MAY FILE AN APPEAL
BY MAIL, FAX, E-MAIL, OR TELEPHONE. IF YOU LIVE WITHIN THE OKLAHOMA CITY
METROPOLITAN AREA, PLEASE CALL 525-1500. IF YOU LIVE OUTSIDE THE OKLAHOMA
CITY METROPOLITAN AREA, PLEASE CALL 1-800-555-1554. AS A CONVENIENCE
IN FILING AN APPEAL, AN OESC MAIL SUPPORT ADDRESS, FAX NUMBER, AND
E-MAIL ADDRESS HAVE BEEN LISTED AT THE TOP OF THIS DOCUMENT. IF YOU HAVE
ANY QUESTIONS OR NEED ADDITIONAL INSTRUCTIONS, PLEASE REFER TO YOUR
"INFORMATION FOR WORKERS WHO ARE UNEMPLOYED" OR "EMPLOYER'S INFORMATION
ABOUT UNEMPLOYMENT INSURANCE" BOOKLET OR CONTACT THE UNEMPLOYMENT
SERVICE CENTER.

CLAIMANT COPY PREPARED 10/09/2014 BY CSS3

UIB282 2-406

Exhibit

3

CLOSED,PROSE,PURCELL,_TID

**U.S. District Court
Western District of Oklahoma[LIVE] (Oklahoma City)
CIVIL DOCKET FOR CASE #: 5:15-cv-00089-M**

Sanders v. Anoatubby et al
Assigned to: Honorable Vicki Miles-LaGrange
Cause: 42:1983 Civil Rights Act

Date Filed: 01/28/2015
Date Terminated: 05/26/2015
Jury Demand: None
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Sherri Sanders

represented by **Sherri Sanders**
6319 NW Cheyenne Ave
Lawton, OK 73505
580-736-0973
PRO SE

V.

Defendant

Bill Anoatubby
Governor

represented by **Michael Burrage**
Whitten Burrage
1215 Classen Dr
Oklahoma City, OK 73103
405-516-7800
Fax: 405-516-7859
Email: mburrage@whittenburragelaw.com
ATTORNEY TO BE NOTICED

Patricia A Sawyer
Whitten Burrage
1215 Classen Dr
Oklahoma City, OK 73103
405-516-7800
Email: psawyer@whittenburragelaw.com
ATTORNEY TO BE NOTICED

Defendant

**Chickasaw Nation Housing
Administration**

represented by **Michael Burrage**
(See above for address)
ATTORNEY TO BE NOTICED

Patricia A Sawyer
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

represented by

Plaintiff's Witness List

1. Lorri Davies – Coworker
2. Michael Crone – Coworker
3. David Wheeler- Coworker
4. Teresa Sherrill
5. Dr. Short
6. Kelly Cook - CN - employee
7. Dennis Harris – CN - employee
8. Ashleigh Ardrey –CN - HR
9. Candice Wheeler- CN - HR
10. Shawn Clemmens – CN - HR
11. Jalinda Kelly – CN - HR
12. Tammy Gray - CN - assistant to Governor Anoatubby
13. Randi Payne – CN - Governor's office
14. Bethany - CN- Governor's office
15. Carmon Jones CN – Wayne Scribner's assistant
16. Terry Factor – CN - Housing
17. Wayne Scribner – CN -Community Services and Housing
18. Ms. Rico – CN – Lt. Governor's assistant
19. Cyndie Key –CN - HR
20. Linda Briggs CN Tribal Legislator
21. Katie Case CN Tribal Legislator
22. Shana Tate Hammond – CN Tribal Legislator
23. Beth Alexander – CN Tribal Legislator

24. Nancy Elliot – CN – Tribal Legislator
25. Tim Colbert - CN – Tribal Legislator
26. Steve Woods – CN – Tribal Legislator
27. Connie Barker – Cn Tribal Legislator Chairman
28. David Woerz – CN- Tribal Legislator
29. Scott Wood – CN – Tribal Legislator
30. Toby Perkins – CN – Tribal Legislator
31. Dean McManus – CN – Tribal Legislator
32. Mary Jo Green – CN – Tribal Legislator
33. Kathy Johnson- CN – Front desk in housing office
34. Sandra Homer – Chickasaw Citizen and former CN employee
35. Heather Turner – Chickasaw Citizen denied due process for homeowner application, and denied in meeting with Secretary Scribner she requested from the Governor's office.
36. Wayne Sims – Administrator for HUD in Oklahoma
37. Sherry Coleman – HUD in Oklahoma
38. Ezra Mann- Reporter for Pauls Valley Democrate
39. Dee Sweet
40. Renee Sweet
41. Jackie Williams
42. Lt. Governor Jefferson Keel
43. Governor Bill Anoatubby
44. Diana Zink

45. Kristin Mc Hollister

46. Toni Elkins

47.