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CLERK DISTRICT COURT
POLK COUNTY IOWA

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BUK NYOACH, Petitioner, **v.** **IOWA CIVIL RIGHTS COMMISSION,** Respondent.	**Case Number CV 7634** **RULING ON PETITION FOR JUDICIAL REVIEW**

INTRODUCTION

The above-captioned matter came before the Court on August 21, 2009 on Petitioner's Petition for Judicial Review. Petitioner, Buk Nyoach, was represented by attorney E.J. Flynn. Respondent, Iowa Civil Rights Commission, was represented by attorney Teresa Baustian. After hearing counsel's arguments and reviewing the court file, including the briefs filed by both parties and the Certified Administrative Record, this Court now enters the following ruling:

PROCEDURAL HISTORY

Petitioner filed a complaint on May 3, 2006, with the Iowa Civil Rights Commission, alleging national origin and race discrimination against his former employer, Fawn Engineering. After an investigation, the Iowa Civil Rights Commission (hereinafter "ICRC") recommended a "no probable cause" finding. (App. at 179). On February 15, 2008, an Administrative Law Judge agreed with the investigator's recommendations and entered an order finding "no probable cause" for the allegations of discrimination. (App. at 182). Petitioner requested reopening, but on February 24, 2009, this request was denied by the Administrative Law Judge. (App. at 326). On March 27, 2009, Petitioner filed a Petition for Judicial Review of the final agency action

of the ICRC. Hearing was held on August 21, 2009, at which time the matter was deemed fully submitted for this Court's consideration.

STATEMENT OF FACTS

Petitioner is an American citizen who was born in Sudan. (App. at 79). He began working for Fawn Engineering as an assembler on January 25, 2006. (App. at 48, 161). Tim Wright was Petitioner's supervisor at Fawn. (App. at 158). Upon being hired, all employees at Fawn were informed that there was a 90-day probationary period after which each would become eligible for union benefits and membership. (App. at 168).

Petitioner received a positive 60-day evaluation on April 3, 2006. (App. at 132). The evaluation noted satisfactory marks for quality of work, quantity of work, attendance, dependability, and attitude. (App. at 132). It also recommended that Petitioner continue employment until the next performance evaluation. (App. at 132). Shortly after the evaluation, on April 14, 2006, Petitioner was dismissed by Tim Wright. (App. at 1-9). The reasons given for the dismissal were "bad communication skills" and "poor work skills." (App. at 133, 165).

STANDARD OF REVIEW

Judicial review of ICRC action is governed by Iowa Code chapter 17A. Iowa Code § 216.17(1) (2009). On judicial review of agency action, the district court functions in an appellate capacity to apply the standards of Iowa Code section 17A.19. Iowa Planners Network v. Iowa State Commerce Commission, 373 N.W.2d 106, 108 (Iowa 1985).

A finding of “no probable cause” constitutes final agency action by the ICRC and bars a Petitioner from seeking relief other than reversal by this court. Iowa Code § 216.17; Clay v. City of Cedar Rapids, 577 N.W.2d 862, 866 n. 1 (Iowa Ct. App. 1998) (noting a plaintiff cannot bring discrimination claims in state district court after ICRC makes a finding of “no probable cause”).

A “no probable cause” finding is not the result of a contested case and is considered “other agency action.” Iowa Civil Rights Comm’n v. Deere & Co., 482 N.W.2d 386, 389 (Iowa 1992). “Pursuant to Iowa Code section 17A.19(10), a court must reverse agency action when any one of several enumerated circumstances exists and ‘substantial rights of the person seeking judicial relief have been prejudiced.’” Doe v. Iowa Board of Medical Examiners, 733 N.W.2d 705, 707 (Iowa 2007). Relief from agency action may be granted upon a showing it committed errors at law or otherwise took action that was “[u]nreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.” Harney v. Iowa Civil Rights Comm'n, No. 05-0439, 2006 WL 2691705 at *2 (Iowa Ct. App. 2006).

“An agency's action ‘is arbitrary or capricious when it is taken without regard to the law or facts of the case.’” Id. (quoting Dico, Inc. vs. Iowa Employment Appeal Bd., 576 N.W.2d 352, 355 (Iowa 1998)). “An abuse of discretion ‘occurs when the agency action rests on grounds or reasons clearly untenable or unreasonable.’” Id. (quoting Dico, Inc. vs. Iowa Employment Appeal Bd., 576 N.W.2d 352, 355 (Iowa 1998)).

The applicable standard of review depends upon the nature of the error claimed in the Petition. If the petitioner claims the error lies with the agency’s findings of fact, the proper question on review is whether the substantial evidence supports those

findings. Meyer v. I.B.P., 710 N.W.2d 213, 219 (Iowa 2006). If the petitioner does not challenge the agency's findings of fact but rather claims the error lies with the agency's interpretation of the law, the question on review is whether the agency's interpretation was erroneous and the Court may substitute its interpretation for that of the agency. Id. (citations omitted). Finally, if the petitioner does not challenge the agency's findings of fact or interpretation of the law, but claims the error lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts. In that case, the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence. Id. (citing Iowa Code § 17A.19(10)(i), (j)).

The Court must reverse, modify or grant other appropriate relief from the challenged agency action if it was "[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f). The substantial evidence standard found in Iowa Code § 17A.19(10) applies to both "contested cases" and "other agency action." Travelers Indemnity Co., v. Commissioner of Insurance, 767 N.W.2d 646, 650 (Iowa 2009). Substantial evidence is defined as

> [T]he quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

Id. § 17A.19(10)(f)(1). "Evidence is substantial if a reasonable mind would accept it as adequate to reach the conclusion at issue." Terwilliger v. Snap-On Tools Corp., 529

N.W.2d 267 (Iowa 1995)(citing Suluki v. Employment Appeal Bd., 503 N.W.2d 402, 404 (Iowa 1993)).

In viewing the record as a whole, the Court must consider any determination of veracity made by the agency fact finder who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. Iowa Code § 17A.19(10)(f)(3). It is the role of the agency, as fact finder, to determine the credibility of the witnesses and the weight to be given to any evidence. Arndt v. City of Le Claire, 728 N.W.2d 389, 394-95 (Iowa 2007)(citation omitted). The agency is free to accept or reject any expert opinion in whole or in part. Sherman v. Pella Corp., 576 N.W.2d 312, 321 (Iowa 1998)(citation omitted).

The application of the law to the facts can be affected by other grounds of error such as erroneous interpretation of law, irrational reasoning, failure to consider relevant facts, or irrational, illogical, or wholly unjustifiable application of law to fact. Meyer, 710 N.W.2d at 218-19; see Iowa Code § 17A.19(10)(c), (i), (j), (m). The Court allocates some degree of discretion to the agency in its review of this question, but not the breadth of discretion given to the agency's findings of fact. Id. at 219 (citation omitted).

DISCUSSION

Iowa Code section 216.15(3)(a) provides that, after a civil rights complaint has been filed,

> [a]n authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge . . . who shall then issue a determination of probable cause or no probable cause.

Iowa Code § 216.15(3)(a). The standard for making a probable cause determination is not provided for in Chapter 216. See Iowa Code § 216.1-19.

In deciding this case, the court is mindful of the Iowa Supreme Court's observation that "the legislature did not intend to require the commission to process every complaint which merely generated a minimal prima facie case." Estabrook v. Iowa Civil Rights Comm'n, 283 N.W.2d 306, 310-11 (Iowa 1979). Instead, "the legislative intent was to permit the commission to be selective in the cases singled out to process through the agency, so as to better impact unfair or discriminatory practices with highly visible and meritorious cases." Id. at 311. Consequently, the court gives deference to the agency's findings of fact. However, as stated above, the court must reverse if Petitioner's substantial rights were prejudiced by an error of law or action that was [u]nreasonable, arbitrary or capricious or characterized by an abuse of discretion. Iowa Code § 17A.19.

In the present case, the investigator recommended a finding of no probable cause on Petitioner's discrimination claim. The ALJ issued a finding of no probable cause based upon the investigator's report without addition, thereby adopting the findings set forth therein, and the same ALJ denied the request to reopen the case. Petitioner contends that the investigation was faulty and filed this Petition for Judicial Review alleging the following four claims: (1) that the ICRC's determination that the adverse employment action against the complainant was not discriminatory was not supported by the substantial evidence in the record;(2) that the ICRC did not consider a relevant and important matter that a rational decision maker in similar circumstances would have considered; (3) that the ICRC's determination was the result of a procedure

or decision making process that was inconsistent with a rule of the ICRC or Iowa law; and (4) that the ICRC's determination was wholly irrational or was otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

I. Was the Agency's Determination Supported by Substantial Evidence in the Record, Did the Agency Not Consider a Relevant and Important Matter that a Rational Decision Maker in Similar Circumstances Would Have Considered, or Was the Agency's Determination Wholly Irrational or Otherwise Unreasonable, Arbitrary, Capricious, or an Abuse of Discretion?

Petitioner contends that he was discriminated against based upon his race, national origin, and color. Specifically he claims that his supervisor, Tim Wright, terminated him prior to the 90-day probationary period because he was Sudanese. He argues that the ICRC's investigation was inadequate and therefore substantial evidence does not exist to support the ICRC's finding of "no probable cause." Petitioner's other claims that the ICRC did not consider a relevant and important matter and that the agency's decision was wholly irrational and illogical are based upon the same argument as the substantial evidence argument and thus will be considered together.

The ICRC relied on statistics shown in a chart entitled "Employment Data" provided by Fawn which shows the number of employees during Petitioner's last week of work, the week of April 10, 2006 through April 14, 2006. That particular week there were 24 Black or African American employees working for Fawn. This amounts to 12% of the company's workforce. The investigator and ALJ found this to be adequate evidence to show that the company did not show a pattern of discrimination against black employees. However, Petitioner's discrimination claim is that Fawn, and specifically Tim Wright, discriminated against Petitioner and other employees based

upon their Sudanese nationality. He claims that Sudanese employees were systematically dismissed before the 90 day probationary period was up, thus being denied the benefits of union membership. Petitioner provided affidavits and the names of ten other Sudanese employees who were terminated just prior to the end of the 90 day probationary period. While the information provided by Fawn shows the number of black or African American employees during a particular week, it is of no use in determining the number of Sudanese employees or whether their employment lasted beyond the 90-day period.

By not obtaining any information relating to Petitioner's national origin discrimination claim, and only focusing on the race/color claim, the record before the court is inadequate support a determination of "no probable cause." The ICRC's determination that the adverse employment action against the complainant was not discriminatory was not supported by the substantial evidence in the record. The ICRC did not consider a relevant and important matter that a rational decision maker in similar circumstances would have considered. The ICRC's determination was wholly irrational or was otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. The agency's decision should therefore be reversed and remanded for a thorough investigation of all of Petitioner's claims.

II. Was the Agency's Determination the Result of a Procedure or Decision Making Process that was Inconsistent with a Rule of the Agency or Iowa Law?

Petitioner's next argument is that the ICRC's determination should be reversed because it was "based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process or action other than a rule that is inconsistent with a rule of the agency." Iowa Code §

17A.19(10)(d)&(g). Specifically, Petitioner contends that the ALJ was involved in the investigative process and also authored both the agency order of no probable cause and signed the order denying an appeal of that no probable cause finding. The Iowa Code states that:

> [an] individual who participates in the making of any proposed or final decision in a contested case shall not have personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties.

Iowa Code § 17A.17(8). The Iowa Code also states that "[a]n authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge employed either by the commission or by the division of administrative hearings created by section 10A.801, who shall then issue a determination of probable cause or no probable cause." Iowa Code § 216.15(3)(a). The Iowa Administrative Code provides a rule which states that:

> After a complaint has been filed, the executive director or a designated staff member shall assign a member of the investigatory staff to make a prompt investigation of the complaint. The investigator shall review all of the evidence and make a recommendation of probable cause or no probable cause or other appropriate action to the administrative law judge designated to issue findings. The administrative law judge shall review the case file and issue an independent determination of probable cause or no probable cause, or other appropriate action.

Iowa Administrative Code § 161-3.13(1)(2009).

Petitioner contends that the ICRC's decision should be reversed because the same ALJ made the no probable cause determination and also denied the request for reopening the complaint. He argues that he is prejudiced because of a lack of separation of functions. The record shows that while the ALJ who recommended a

finding of no probable cause was the same one who denied the reopening, the ALJ did review the evidence and provided a written order explaining her decision for denying the reopening of the complaint. There is nothing that prohibits the same ALJ who issued a no probable cause determination from denying a reopening of the case, and therefore Petitioner's argument fails on this particular issue.

However, the record does indicate that the ALJ was involved in the investigation. On July 2, 2007, the ALJ wrote a note to the investigator which requested information that the ALJ wanted regarding treatment of persons of color and information about persons discharged during probation. (App. at 69). The statutes and rules that provide for the investigation process indicate that a member of the staff will perform an investigation, and the ALJ will then review the case fail and make an independent determination. If the ALJ is involved in the investigation by directing the investigator down a certain path, it is unlikely that she is making a completely independent determination. The ICRC's determination was the result of a procedure or decision making process that was inconsistent with a rule of the ICRC and Iowa law. This case should be reversed and remanded for an independent investigation performed solely by an investigator without any assistance from the ALJ.

ORDER

IT IS THE ORDER OF THE COURT that the Decision of the Iowa Civil Rights Commission is **REVERSED and REMANDED** for a new investigation into Petitioner's claims that is not inconsistent with the opinion.

IT IS SO ORDERED this 21st day of October, 2009.

ARTHUR E. GAMBLE, JUDGE
Fifth Judicial District of Iowa

Original filed.

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