IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

BRIAN HAGER **Plaintiff,** **v.** **IOWA CIVIL RIGHTS COMMISSION,** **Defendant,**	**05771 CVCV056404** **ORDER GRANTING MOTION TO DISMISS**

COMES NOW, before the Court, a Motion to Dismiss filed by Defendant Iowa Civil Rights Commission ("ICRC"). A hearing was held on August 2, 2018. Plaintiff Brian Hager ("Hager") appeared through his counsel Jim Duff and Tom Duff. Defendant ICRC appeared through its counsel Katie Fiala. ICRC argues that Plaintiff does not have standing to pursue this judicial review action and his available remedy is to seek a right to sue letter and pursue his claims in a separate lawsuit. The Court holds Plaintiff does not have standing to bring this judicial review action pursuant to Iowa Code section 17A.19 and, therefore, this matter is dismissed.

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND.

Hager filed a complaint with the ICRC against his employer Menards Inc., and alleged supervisors Aaron Tillman, Kevin Plym, and Doug Yeoman (collectively, "Respondents") alleging employment discrimination on the basis of race and disability. A Civil Rights Specialist with the ICRC issued a preliminary case review analyzing the allegations made by Hager and the response provided by Respondents and recommending that the case be administratively closed. On March 13, 2018, the ICRC administratively closed the case. Hager moved to reconsider the administrative closure and filed an application for reopening. On May 1, 2018, the ICRC held the application for reopening was not timely. The ICRC further held that, even if timely, Hager

had not provided additional evidence or arguments that would cause the ICRC to reconsider its decision to administratively close his complaint.

Hager has not sought a right to sue letter. Instead, Hager filed this judicial review petition on May 31, 2018. Hager alleges that the administrative closure was a final agency action and, therefore, seeks judicial review pursuant to Iowa Code § 17A.19(3) and asserts grounds to challenge the decision-making of the ICRC under Iowa Code § 17A.19(10), including that the administrative closure was unconstitutional, illogical, and irrational.

The ICRC moved to dismiss, arguing Hager does not have standing to bring this judicial review petition and that his proper remedy is to seek a right to sue letter and pursue his claims in District Court in an original action.

II. STANDARD ON A MOTION TO DISMISS.

When reviewing a motion to dismiss, the Court accepts the facts alleged in the petition as true. Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp., 812 N.W.2d 600, 604 (Iowa 2012). Dismissal is proper only if "the petition shows no right of recovery under any state of facts." Id. Iowa's appellate courts "will affirm a district court ruling that granted a motion to dismiss when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted." Shumate v. Drake University, 846 N.W.2d 503 (Iowa 2014) (affirming motion to dismiss after finding no private right of action).

III. ANALYSIS AND CONCLUSIONS OF LAW.

The Iowa Administrative Procedure Act, Chapter 17A of the Iowa Code, authorizes judicial review of administrative agency actions. The Iowa Civil Rights Act provides for judicial review pursuant to chapter 17A. "Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A."

Iowa Code § 216.17. Iowa Code section 17A.19(1) provides that: "A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter." Iowa Code § 17A.19(1). Therefore, Hager must demonstrate a "final agency action" from which he is "aggrieved or adversely affected."

Hager has plead a final agency action. The agency action complained of by Hager is the administrative closure of his complaint with the ICRC. The ICRC's administrative regulations provide that an administrative closure is a final agency action. Iowa Administrative Code 161-2.1(10) "Final Actions" states:

> The following procedures shall constitute final actions of the commission:
>
> > a. The term 'administratively closed' shall mean that the commission will cease action on a complaint because, in the opinion of the investigating official, no useful purpose would be served by further efforts. Administratively closing a case is appropriate in circumstances such as the following: The commission staff has not been successful in locating a complainant after diligent efforts; the respondent has gone out of business; a right-to-sue letter has been issued; or after a probable cause decision has been made, it is determined that the record does not justify proceeding to public hearing.

161 IAC 2.1(10)(a). Hager's case was administratively closed and the ICRC refused to reopen that decision, thereby creating a final agency action.

The ICRC argues Hager does not have standing, however, because the "aggrieved or adversely affected" language of section 17A.19(1) is not met. The ICRC argues Hager was not "aggrieved or adversely affected" by the administrative closure because it did not constitute a final decision on the merits of his discrimination claims. In order to be "aggrieved or adversely affected," a party must show: "(1) a specific, personal, and legal interest in the subject matter of the agency decision and (2) a specific and injurious effect on this interest by the decision." Polk County v. Iowa State Appeal Board, 330 N.W.2d 267, 273 (Iowa 1983). The Iowa Supreme

Court has referred to the first prong as "the interest prong" and the second prong as "the prejudice prong." Auto Owners Ins. Co. v. Iowa Ins. Div., 887 N.W.2d 600, 602 (Iowa 2016).

The ICRC's argument appears to invoke both the interest prong and the prejudice prong. The ICRC argues Hager does not have a "legal interest" in the subject matter and that he was not "injuriously affected" because he can still obtain a right to sue letter and pursue the merits of his discrimination claim in District Court.

Complaints made to the ICRC go through a preliminary screening process. The case may be "screened in" as warranting further processing or "screened out." Cases that are screened out are then administratively closed. 161 IAC 3.12(1)(e-g). Under the ICRC's administrative procedures, an administrative closure is not a final determination of the merits of a claimant's discrimination claim. **"**Unlike a "no probable cause determination "an administrative closure is not a final determination of the merits of the case." 161 IAC 3.12(3). When a complaint has been administratively closed, the claimant is entitled to request and the ICRC shall issue a right to sue letter, as long as the request is made within two years from the date of the administrative closure. 161 IAC 3.10 (2), (4)(d); Iowa Code § 216.16(3)(a)(4).

A right to sue letter is essentially confirmation that a complainant has exhausted their administrative remedies and may pursue their discrimination claims in district court. Iowa Code section 216.16 requires a person claiming an unfair or discriminatory practice under the Iowa Civil Rights Act to first seek administrative relief with the ICRC, but also provides that they will be issued a "release stating that the complainant has a right to commence an action in district court" when certain requirements are met. Iowa Code § 216.16(1), (3). A "right to sue" is a "release issued by the commission stating that the complainant has a right to commence an action in the district court. The term 'right to sue' is the same as the 'release' or 'administrative

release' described in Iowa Code section 216.16 and these terms may be used interchangeably." 161 IAC 2.1(8). "A right to sue letter follows from an administrative release. It signals that the administrative stage of the case is over and the plaintiff has permission to file suit in the district court." Feng v. Komenda, No. 15-CV-139-LRR, 2016 WL 1465399, at *3 (N.D. Iowa Apr. 14, 2016). As one federal court explained:

> ICRA provides two avenues into court. First, a complainant may file an action in district court if he or she has "timely filed the complaint with the [ICRC] as provided" by statute and "[t]he complaint has been on file with the commission for at least sixty days and the commission has issued a release to the complainant ...." Iowa Code § 216.16(2). Otherwise, if the ICRC retains the complaint, conducts an investigation and renders a final decision, the complainant may seek judicial review of that decision. *Id.* § 216.17.

Feng v. Komenda, No. 15-CV-139-LRR, 2016 WL 1465399, at *3 (N.D. Iowa Apr. 14, 2016). If Hager asks for a right-to-sue letter, he may pursue the first avenue and sue in district court. Had the ICRC retained Hager's case, he could have pursued the second avenue of judicial review after receiving a final decision on the merits from the ICRC.

In this litigation, Hager seeks a third avenue into district court. Hager seeks to challenge the administrative closure, which is not a final determination of the merits, on judicial review. This would be a procedure apart and separate from a request for a right to sue letter and his subsequent action in district court. Hager argues that he should be allowed to challenge alleged flaws in the ICRC's screening process because it deprives him of benefits Hager could receive in the ICRC, such as ICRC expertise to provide a broad spectrum of relief at low cost to Hager and ICRC sponsored mediation.

The Court finds that the holding of the Iowa Supreme Court in Estabrook v. Iowa Civil Rights Commission, 283 N.W.2d 306, 310-11 (Iowa 1979), is controlling and that based on the application of Estabrook, Hager's Petitoin does not set forth a "legal interest," nor was he "injuriously affected" by the ICRC's administrative closure. Hager has not identified an

administrative right to which he was entitled under Iowa Code chapter 216. Instead, his argument is, essentially, that the ICRC got it wrong when it made a screening decision that his case did not warrant further investigation and that he would benefit from the cost-free work of the ICRC if it pursued his case. At oral argument Hager's attorney argued that confidentiality rules prevent the ICRC from getting the complete story during the screening process. This merely circles back to the argument that the ICRC's screening process got it wrong on the merits and should have "screened in" his claim. However, Hager has no "legal interest" in having his claim screened in at the agency level. Further, his claim of discrimination is not adversely affected because he may still pursue it in district court.

The ICRA grants Hager a private cause of action for the employment discrimination he alleges. Iowa Code section 216.6 sets forth unfair or discriminatory employment practices. Iowa Code section 216.16 creates a private right of action, in that it allows a person claiming to be aggrieved by an unfair or discriminatory practice to pursue such claims, first through the ICRC and then, once the administrative remedies have been exhausted, in district court. The ICRA, chapter 216, does not, however, create a right to have the ICRC investigate and decide the merits of Hager's case—it does not create a right to be "screened in." In Estabrook v. Iowa Civil Rights Commission, 283 N.W.2d 306, 310-11 (Iowa 1979), the Iowa Supreme Court held there was no right to have a claim pursued through the ICRC. As Estabrook explained: "Examining the statutory provisions, we find the legislature did not intent [sic] to require the commission to process every complaint which merely generated a minimal prima facie case." Estabrook further noted: "the legislature did not intend to create a fixed right to a remedy through the commission route because its funding and staffing for the commission would make it impossible to carry out such an assignment." Id. At 310-11. Instead, Estabrook emphasized that "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.

The holding of Estabrook is applicable to an "administrative closure" and requires dismissal on the ICRC's motion to dismiss. Estabrook held that the ICRA did not create a right to have a particular claim investigated or pursued by the ICRC. The reasoning behind that decision remains: the statutory language clearly contemplates that many cases will be administratively closed and that the claimants will instead pursue their claims in District Court. By allowing for the administrative closure process but requiring a right to sue letter be issued, the legislature allowed citizens a mechanism to exhaust their administrative remedies and still be entitled to pursue their claims, even if the ICRC decided not to act.

IT IS HEREBY ORDERED that the Plaintiff's Petition is dismissed.

State of Iowa Courts

Type: OTHER ORDER

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CVCV056404	BRIAN HAGER VS IOWA CIVIL RIGHTS COMMISSION

So Ordered

Sarah Crane, District Court Judge
Fifth Judicial District of Iowa