

**IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY**

<b>PALMER COLLEGE OF CHIROPRACTIC,</b>	)	
	)	
<b>Petitioner,</b>	)	<b>Case No. CVCV298255</b>
	)	
<b>v.</b>	)	
	)	<b>RULING ON PETITION FOR</b>
<b>IOWA CIVIL RIGHTS COMMISSION,</b>	)	<b>JUDICIAL REVIEW</b>
	)	
<b>Respondent.</b>	)	

This matter came for hearing before this Court on July 18, 2018. The petitioner, Palmer College of Chiropractic (hereinafter “Palmer”), was represented by attorneys Diane M. Reinsch and Alex C. Barnett. The respondent, Iowa Civil Rights Commission (hereinafter “ICRC”), was represented by attorney Katie Fiala, Assistant Attorney General with the Civil Rights Section. The intervener, Darren Petro (hereinafter “Petro”), was represented by attorney Jim T. Huff. The Court has considered the arguments, the pleadings, and the applicable law and now enters the following ruling:

**PROCEDURAL HISTORY**

Palmer seeks judicial review pursuant to Iowa Code § 17A.19 of the ICRC’s March 9, 2018 Summary Order and Notice Denying Reopening.<sup>1</sup> This ICRC order constitutes “other agency action,” because the decision to deny reopening of the case was agency action and not the result of a contested case. *Iowa Civil Rights Comm’n v. Deere & Co.*, 482 N.W.2d 386, 389 (Iowa 1992). The ICRC order also constitutes final agency action pursuant to Iowa Code § 17A.19(3). Palmer’s Petition for Judicial Review was timely filed. *See* Iowa Code § 17A.19(3) (a proceeding for judicial review must be commenced “within thirty days after the issuance of the agency’s final decision”).

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<sup>1</sup> The procedural history facts are the admitted facts in Palmer’s Petition for Judicial Review.

Palmer's Petition for Judicial Review is properly brought in the Iowa District Court for Scott County because Palmer's principal place of business is in Scott County, Iowa. *See* Iowa Code § 17A.19(2) ("Proceedings for judicial review shall be instituted by filing a Petition either in Polk County District Court or in the District Court for the county in which the petitioner resides or has his principal place of business.").

### FACTS

The court finds the following facts:

On April 25, 2014, Petro filed a complaint that the ICRC accepted and assigned as case number CP # 04-14-65682. This complaint alleged age and disability discrimination in education and retaliation. *See* Exhibit A to Palmer's Brief. The disability Petro alleged was "I have low back pain and physical restrictions caused by an injury from military service." *Id.* On September 18, 2014, the ICRC administratively closed this complaint.

On October 10, 2014, Petro filed a complaint with the Davenport Civil Rights Commission. The Davenport Civil Rights Commission automatically cross-filed the complaint with the ICRC on November 6, 2014. ICRC received the cross-filed complaint on November 6, 2014 and assigned it case number CP # 11-14-66587. This second complaint alleged age discrimination and retaliation because of the prior civil rights complaint or "otherwise exercised my civil rights." *See* Exhibit C to Palmer's Brief. On November 6, 2014, Petro amended his second complaint to allege he was also discriminated against on the basis of his disability or perceived disability and that he was subjected to unlawful retaliation after complaining about disability discrimination. *See* Exhibit D to Palmer's Brief.

On November 12, 2014, Palmer's counsel notified the ICRC that he believed Petro's second complaint was duplicative of Petro's first complaint. Deb Stewart, an ICRC staff member, examined Petro's second complaint and determined that it was not a duplicate

complaint. Ms. Stewart wrote a memo confirming her finding. In this memo, Ms. Stewart stated Petro's second complaint was the *first time* he specifically alleged he was discriminated against because of a perceived disability and retaliated against by Palmer based on his complaints of disability or perceived disability discrimination (emphasis in the original).

On October 20, 2017, the Davenport Civil Rights Commission notified the ICRC that it had closed the case; therefore, the ICRC did the same and closed its case. On January 29, 2018, the ICRC issued a Right-To-Sue letter to Petro on his second complaint, CP # 11-14-66587, pursuant to his attorney's request. On February 27, 2018, Palmer filed a Motion to Reconsider Issuance of Right-To-Sue Letter with the ICRC, which the ICRC denied on March 9, 2018.

### **STANDARD OF REVIEW**

It is undisputed the ICRC's decision to deny Palmer's Motion to Reconsider its decision to issue a Right-To-Sue letter to Petro for his second complaint is an agency action within the meaning of the Iowa Administrative Procedure Act, Iowa Code Chapter 17A.19. The ICRC's issuance of a Right-To-Sue letter constitutes agency action. *Ritz v. Wapello County Bd. of Sup'rs*, 595 N.W.2d 786, 792 (Iowa 1999). The ICRC order constitutes "other agency action," because the decision to deny reopening of the case was agency action and not the result of a contested case. *Deere & Co.*, 482 N.W.2d at 389. Pursuant to Iowa Code § 17A.19(10), the district court may reverse or modify an agency's decision if the agency's decision is erroneous under a ground specified in the Act and a party's substantial rights have been prejudiced. The burden of demonstrating invalidity of an agency's action rests on the party asserting the invalidity. *See* Iowa Code § 17A.19(8)(a).

### **ISSUES PRESENTED**

Palmer frames its two issues as follows:

1. Whether the Iowa Civil Rights Commission failed to consider an important relevant

matter – Petitioner’s argument that Iowa Code section 216.19(6) prohibits filing of duplicative complaints based upon the same acts or practices.

2. Whether the Iowa Civil Rights Commission’s failure to consider Iowa Code section 216.19(6) and its conclusion drawn therefrom deprives all ICRC administrative closures of any finality and vitiates the ICRC’s administrative process, which renders its decision unreasonable, arbitrary or capricious.

The ICRC denies the validity of Palmer’s issues and arguments and claims it properly issued a Right-To-Sue letter on Petro’s second complaint pursuant to Iowa Code § 216.16(2) and Iowa Administrative Rule 3.10 even if Petro’s second complaint was duplicative. The ICRC further argues its decision was not unreasonable, arbitrary or capricious.

Petro argues the court should deny Palmer’s Petition for Judicial Review because Iowa Code § 216.16(4) barred the ICRC from reconsidering its issuance of the January 29, 2018 Right-To-Sue letter on Petro’s second complaint. Petro’s second argument is that Deb Stewart’s memorandum denying Palmer’s duplicative argument was final agency action and required Palmer to file for judicial review on that decision and since Palmer did not do that, it is foreclosed from raising it now or from raising its duplicative argument under Iowa Code § 216.19(6) in Petro’s district court discrimination lawsuit.

Palmer asserts Petro’s arguments are contrary to the law.

### **CONCLUSIONS OF LAW**

All parties seem to agree the decision in this case hinges on the interpretation of *Ritz v. Wapello County Bd. of Sup’rs*, 595 N.W.2d 786 (Iowa 1999). In *Ritz*, the respondent challenged the timeliness of the filing of the civil rights complaint. *Id.* at 788. The ICRC was not a party to that case, but did file a successful *amicus* brief to the Iowa Supreme Court making the same arguments it again makes in this case. In *Ritz*, respondents contended the ICRC improperly

issued a Right-To-Sue letter because the civil rights complaint was not timely filed. *Id.* The Iowa Civil Rights Act sets out conditions for the issuance of Right-To-Sue letters. *See* Iowa Code § 216.16(3)(a). The ICRC promulgated an administrative rule, which sets out the exceptions to issuing a Right-To-Sue letter. *See* Iowa Admin.Code r. 161-3.10(4). In *Ritz*, the Iowa Supreme Court held “[T]he function of the right-to-sue letter is to certify to the district court that the conditions precedent stated in rule 3.10(2) have been met and none of the exceptions in rule 3.10 apply.” *Ritz*, 595 N.W.2d at 791. The Court went on to find that **the Right-To-Sue letter does not certify any factual aspects of the case beyond the limitations of rule 3.10.** *Id.*, *Emphasis added.*

The eight circumstances permitting ICRC to refuse to issue a Right-To-Sue letter under Iowa Admin. Code r. 161-3.10(1) and (4) are:

- (1) No charge was ever filed;
- (2) 60 days have not elapsed since filing;
- (3) An ALJ has found “no probable cause” under Iowa Code § 216.15(3);
- (4) A conciliation agreement has been executed under Iowa Code § 216.15;
- (5) ICRC had served notice of public hearing under Iowa Code § 216.15(5);
- (6) Two years had elapsed since an administrative closure by the ICRC;
- (7) Untimeliness has been found under rule 3.9 or by the ALJ after an investigation;
- (8) No jurisdiction has been found under rule 3.9 or by the ALJ after an investigation.

Clearly, none of these eight circumstances is present in this case as conceded by Palmer.

Despite this rule, Palmer argues the ICRC should have refused to allow Petro to file his second discrimination complaint and refuse to issue him a Right-To-Sue letter. Palmer argues that while the discrimination alleged in the second discrimination complaint may be a little different than that alleged in the first discrimination complaint, the narrative Petro provided to

both complaints is the same.<sup>2</sup> *See* Exhibits C and D to Palmer's Brief. Palmer asserts the narratives provided illustrate the duplicative nature of Petro's second discrimination complaint. Palmer concludes pursuant to Iowa Code § 216.19(6), Petro is prohibited from filing this second complaint.

As stated above in *Ritz* and reiterated again, issuance of the Right-To-Sue letter does not certify that any factual allegations in the case have been proven, rather the issuance of the letter means the conditions under rule 3.10(2) were met and no exceptions apply. *Ritz*, 595 N.W.2d at 791. A Right-To-Sue letter may be issued any time after 60 days of the filing as long as it does not violate Rule 3.10(2) – (4). Often times, this Right-to-Sue letter is issued before there has been any time for the ICRC to make any investigation of the facts, let alone any determinations. This procedure allows for civil rights complainants to pursue their own actions in a more timely manner in state and/or federal court after receiving a Right-To-Sue from the ICRC. If a civil rights complainant has to wait for the ICRC to make any factual or further determinations, evidence can become stale, if not disappear entirely. Therefore, the ICRC was authorized to issue a second Right-To-Sue letter to Petro for his second complaint because it did not violate Rule 3.10. Instead, the ICRC was bound by that rule to do just what it did. The court further finds the ICRC's decision was not unreasonable, arbitrary or capricious. Pursuant to this interpretation of *Ritz*, with which the court agrees, the court finds Palmer's Petition for Judicial Review fails.

The question now is can and if so, how and when, can Palmer make an argument that Petro's complaint is duplicative under Iowa Code § 216.19(6)? Palmer relies heavily on its interpretation of Iowa Code § 216.19(6) vigorously arguing that section applies and prohibits the

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<sup>2</sup> In the second discrimination complaint, Petro alleged "perceived" disability in addition to disability. In his first complaint, he claimed disability discrimination based on low back pain and restrictions from his military service. There was no mention of any perceived disability on the complaint itself.

ICRC from issuing a Right-To-Sue on Petro's second complaint because it was duplicative. Palmer argues if Iowa Code § 216.19(6) is ignored it becomes meaningless.

The court fully accepts the ICRC's assertion and analysis that Iowa Code § 216.19(6) does not apply to the issuance of a Right-To-Sue letter. Again, the court finds this determination by the ICRC is not unreasonable, arbitrary or capricious. As asserted by the ICRC, the court finds Iowa Code § 216.19(6) is a provision that applies to all suits brought under it and any arguments under it are not arguments that a respondent needs to make before the ICRC, but should be addressed directly to the court in which the discrimination action is filed. As stated in Iowa Code § 216.19(6), the ICRC can refer a complaint to a referral agency for investigation and resolution. Iowa Code § 216.19(8) further provides that the referral of a complaint by the ICRC to a referral agency or by a referral agency to the ICRC shall not affect the right of a complainant to commence an action in the district court under section 216.16. In other words, if a complainant removes a case from the ICRC or a referral agency before a finding of probable cause or no probable cause is made, it logically follows that the respondent can make any arguments defending itself that it could have made in the agency process.

Therefore, Palmer was not injured until Petro received his Right-To-Sue letter and filed his case in district court. Palmer should not and cannot lose its rights to defend itself by arguing the duplicative nature of Petro's complaint under Iowa Code §216.16(9) simply because the ICRC issued a Right-To-Sue, which was issued only because it was jurisdictionally proper and no factual determination was made. If Petro's second complaint is found by the district court to be duplicative of his first complaint with the ICRC, then the district court should dismiss Petro's pending discrimination action. In other words, the ICRC's decision to issue the Right-To-Sue letter was proper, even if the district court subsequently finds Petro's second complaint is duplicative under Iowa Code § 216.19(6). Palmer does not lose its right to pursue its duplication

argument in the district court case, Scott County Case No. CVCV297911.

With respect to Petro's arguments, the court agrees with Palmer and finds Petro's arguments are contrary to the law. Petro first argues Iowa Code § 216.16(4) bars a reconsideration of its issuance of a Right-To-Sue letter. That section does bar the ICRC from taking any further action on a complaint once a Right-To-Sue letter has been issued. However, as pointed out by both Palmer and the ICRC, Iowa Admin. Code r. 161-3.16(2)(c)(4) provides an exception to that section. That rule provides that the ICRC is authorized to reopen and reconsider an administrative closure if the commission finds that the administrative closure was substantially influenced by several grounds, one of which is "gross and material error by the commission staff." Moreover, Iowa Admin. r. 161-3.16(1) provides that the provisions of the rule allowing the ICRC to reopen and reconsider an administrative closure apply only to commission decisions and actions taken prior to the issuance of the notice of a hearing. Clearly, the implication of this rule is that a review or reconsideration of an ICRC's decision is permitted to allow the ICRC to determine whether the administrative closure was substantially influenced by several grounds, one of which is "gross and material error by the commission staff." Therefore, a motion to reconsider is not prohibited. Here, the motion to reconsider was properly made. The ICRC denied the motion, which then became final agency action.

Petro's second argument that Palmer cannot raise its Iowa Code § 216.19(6) duplicative argument in the district court case, Scott County Case No. CVCV297911, because the Stewart memo constituted final agency action is also flawed. The Stewart memo clearly constituted intermediate agency action and not final agency action. The final agency action was the issuance of the Right-To-Sue letter. Moreover, until the ICRC issued the Right-To-Sue on Petro's second ICRC complaint, Palmer was not injured by the ICRC's refusal to dismiss Petro's second complaint as duplicative pursuant to Iowa Code § 216.19(6). Because Palmer was authorized to

request the ICRC to reopen and reconsider its administrative closure of Petro's second complaint, Stewart's memo was intermediate agency action and does not bar Palmer from raising its duplicative arguments under Iowa Code § 216.19(6) in Petro's district court case, Scott County Case No. CVCV297911. *See* Iowa Admin. Code r. 161-3.16(2)(c)(4).

**RULING**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Petition for Judicial Review is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner is not foreclosed from raising its Iowa Code § 216.19(6) arguments that Petro's ICRC complaint was duplicative in Scott County Case No. CVCV297911.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs, if any, are assessed against Petitioner.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV298255  
**Case Title** PALMER COLLEGE OF CHIROPRACTIC VS IOWA CIVIL RIGHTS COMMISSI

So Ordered

A handwritten signature in cursive script that reads "Marlita A. Greve".

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Marlita A. Greve, Chief District Judge,  
Seventh Judicial District of Iowa