

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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KARI WHITE,	)	Case No. CVCV060163
	)	
Petitioner,	)	
	)	
v.	)	
	)	
STATE OF IOWA	)	<b>ORDER ON JUDICIAL</b>
(SECOND JUDICIAL DISTRICT) and	)	<b>REVIEW</b>
IOWA PUBLIC EMPLOYMENT	)	
RELATIONS BOARD,	)	
	)	
Respondents.	)	

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Before the court is Petitioner Kari White’s (Kari) Petition for Judicial Review (the Petition) of final agency action in a contested case. Telephonic oral argument on the Petition was held on December 4, 2020. Representing Kari was attorney Mark Hedberg. Attorney Diana Machir represented Respondent Iowa Public Employment Relations Board (PERB). Assistant Attorney General Molly Weber represented Respondent Second Judicial District Department of Correctional Services (SJDDCS). Oral argument was not reported.

Upon review of the certified agency record, the court file and the parties’ respective oral arguments in light of the relevant law, the court enters the following order affirming PERB’s final ruling and dismissing the Petition for the following reasons.

**BACKGROUND FACTS AND PROCEEDINGS**

Kari was employed by SJDDCS as a probation parole officer 3. (Ex. 18C). On March 11, 2019, SJDDCS terminated her employment. (Tab 1C at p. 1). Kari filed a grievance with SJDDCS. (Tab 1B). It was denied on April 30, 2019. (*Id.*)

Kari filed a state employee grievance with the Iowa Department of Administrative Services (IDAS) on May 7, 2019, alleging she was wrongfully terminated and contending her position is merit covered. (Tab 1C). By letter dated May 10, 2019, general counsel for IDAS informed Kari that IDAS could not process her grievance because her position is not covered by the merit system and, even if it was covered, she failed to timely file her grievance within the seven days required by Iowa Code section 8A.415(2). (Tab 1A).

On May 17, 2019, Kari filed a section 8A.415(2) state employee disciplinary action appeal, PERB Case No. 102327, with PERB. (Tab 1). SJDDCS filed a motion to dismiss Kari's grievance alleging she is not a merit system employee and asserting her appeal was not timely filed with IDAS. (Tab 4).

In July 2019, the case was transferred to PERB from an administrative law judge. (Tab 10). The parties presented oral arguments to PERB on the timeliness issue only. (Tab 15). On April 22, 2020, PERB issued its ruling and order, *White & State of Iowa*, 2020 PERB 102327, concluding Kari failed to timely file her grievance with IDAS. (Tab 16 at pp. 3-4). PERB granted the State's motion and dismissed Kari's state employee disciplinary action appeal. (Tab 16 at p. 4).

Kari then filed the instant Petition. (05/06/20 Petition).

### **STANDARD OF REVIEW**

Judicial review of final agency action in a contested case is governed by the Iowa Administrative Procedure Act (IAPA), Iowa Code chapter 17A. District courts function in an appellate capacity when reviewing final agency decisions.

*Bd. of Regents v. Iowa Pub. Emp't Rel. Bd.*, 861 N.W.2d 268, 271 (Iowa Ct. App. 2014) (citation omitted).

Iowa Code section 17A.19(10) governs judicial review of agency decisions. Iowa Code § 17A.19(10). *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 255 (Iowa 2012). The court may grant relief if the agency action has prejudiced the substantial rights of the petitioner and the agency action meets one of the enumerated criteria contained in section 17A.19(10)(a) through (n). *Id.* at 256. “The burden of demonstrating . . . the invalidity of agency action is on the party asserting invalidity.” *AFSCME Council 61 v. PERB*, 846 N.W.2d 873, 877 (Iowa 2014). (quoting Iowa Code section 17A.19(8)(a)).

Here, Kari alleges PERB’s adverse ruling on the timeliness issue is

(c) Based on an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency; and

(m) Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

Iowa Code § 17A.19(10)(c), (m). The court may affirm the agency action or remand to the agency for further proceedings. Iowa Code § 17A.19(10)(c).

### **ANALYSIS**

At oral argument Kari abandoned other grounds originally asserted in the Petition. She also asks the court to remand the case to PERB to determine a second issue raised in SJDDCS’s motion, but not addressed by PERB in its ruling. That issue is whether Kari’s position is covered by the merit system. Iowa Code § 8A.412. Because PERB’s ruling does not address this issue, it is

not a properly preserved issue for review and the court gives it no further consideration.

The focus of the timeliness issue is on PERB's interpretation of an underlying grievance filing timeline with IDAS. Kari contends:

1. PERB erred in its interpretation of the Iowa Code section 8A.415(2) and IDAS rule 11—61.2(6) timeline for filing Kari's underlying grievance with IDAS.
2. Given the correct interpretation, Kari's underlying grievance filing was timely and PERB's ruling dismissing it as untimely is irrational, illogical, or wholly unjustifiable.

The court will address each issue in turn.

**A. Whether PERB erred in its interpretation of the Iowa Code section 8A.415(2) and IDAS rule 11—61.2(6) timeline for filing Kari's underlying grievance with IDAS.** The relevant filing timeline for Kari's underlying grievance is set out in both Iowa Code section 8A.415(2) and IDAS rule 11—61.2(6), as within “seven calendar days” following or after “the effective date of the action.” At issue is the meaning of “effective date of the action” to begin the seven-day deadline for Kari filing her appeal with IDAS. It is undisputed that Kari was terminated on March 11, 2019. It is also undisputed that she first filed a grievance with SJDDCS and it was denied on April 30, 2019. Kari then filed her grievance with IDAS on May 7, 2019, which was 57 days following her termination.

Kari asserts she filed the IDAS grievance timely because it was filed within seven days following the denial of her grievance with SJDDCS on April 30, 2019. She claims the date of SJDDCS's denial of her grievance is the “effective date” of

the action, which starts the seven-day IDAS filing deadline. PERB and SJDDCS argue the section 8A.415(2) appeal process is exclusive and does not contemplate another grievance process such as the one Kari pursued with SJDDCS. Further, they argue the seven-day deadline runs from the date of the disciplinary action, which in this case was seven days from the March 11, 2019, date of Kari's termination.

The applicable statutory provisions provide in relevant part:

**20.18 Grievance procedures.**

. . . .

2. Public employees of the state or public employees covered by civil service shall follow either the grievance procedures provided in a collective bargaining agreement, or in the event that grievance procedures are not provided, shall follow grievance procedures established pursuant to chapter 8A, subchapter IV, or chapter 400, as applicable.

**8A.415 Grievances and discipline resolution procedures.**

. . . .

2. Discipline resolution.

*a.* A merit system employee . . . who is discharged . . . may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the [IDAS] director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

*b.* If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board.

Iowa Code §§ 20.18(2), 8A.415(2)(a)-(b).

DAS administrative subrule 61.2(6) provides, in relevant part:

**11—61.2(8A) Appeals.**

**61.2(6) Appeal of disciplinary actions.** Any nontemporary employee covered by merit system provisions who is . . . discharged . . . may bypass steps one and two of the grievance procedure provided for in rule 11—61.1(8A) and may file an appeal in writing to the [IDAS]

director for a review of the action within 7 calendar days after the effective date of the action. . . .

Iowa Admin. Code r. 11—61.2(6).

In interpreting statutory provisions, the court must consider not just isolated words and phrases, but must construe statutes in their entirety, and avoid construction rendering parts statutes redundant, irrelevant, or absurd. *Iowa Beta Chapter of Phi Delta Theta Fraternity v. State*, 763 N.W.2d 250, 260 (Iowa 2009). Absent a statutory definition or meaning established by law, “we give words their ordinary and common meaning by considering the context in which they are used.” *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004). Rules of statutory construction apply equally to the interpretation of agency rules. *See, e.g., Office of Consumer Advocate v. Iowa Utils. Bd.*, 744 N.W.2d 640, 643-644 (Iowa 2008).

When the court examines the entirety of section 8A.415(2) in tandem with section 20.18 and DAS rule 11—61.2(6), it is evident that the section 8A.415(2) grievance process is exclusive. The language of section 20.18 is plain in providing that state employees are to follow the exclusive grievance process set forth in chapter 8A. Section 8A.415(2) and IDAS rule 11—61.2, which establish the grievance process for disciplinary actions such as Kari’s (termination), contemplate skipping steps one and two and proceeding immediately to “step three.” Step three requires a grievance filing with IDAS within seven days following the effective date of the disciplinary action. This process is exclusive and specifically precludes prior steps such as what Kari did in filing a grievance with SJDDCS.

Given the context of these provisions while giving the words their common and ordinary meaning, “effective date of the action” can only mean the date the disciplinary action occurred. The whole purpose of section 8A.415(2) and its “go directly to step three” directive would be frustrated if the timeline is construed as Kari asserts. Additionally, Kari’s interpretation renders section 20.18 irrelevant to the extent it deems the section 8A.415 grievance process exclusive and precludes other non-IDAS processes, such as the one Kari pursued with SJDDCS. The only reasonable interpretation of section 8A.415(2) and IDAS rule 11—61.2 is that these provisions require a state public employee to file a grievance within seven days following the disciplinary action. PERB’s interpretation of the grievance filing timeline is not erroneous. Iowa Code § 17A.19(10)(c).

**B. Given PERB’s proper interpretation of the grievance filing timeline, whether Kari timely filed her underlying grievance and whether PERB’s ruling is irrational, illogical, or wholly unjustifiable.** It is undisputed that Kari filed her grievance 57 days following her termination. Thus, PERB correctly granted SJDDCS’s motion to dismiss due to Kari’s untimely filing of her underlying grievance with IDAS. PERB’s decision was based on the correct interpretation of section 8A.415(2), the undisputed date of Kari’s grievance filing, and established PERB case law. Accordingly, PERB properly concluded it did not have authority over Kari’s merit appeal.

In its ruling, PERB relied on its established case law to conclude that PERB is without authority over a particular case when the grievant fails to meet

underlying statutory grievance timelines. *See, e.g., Wise and State of Iowa (Dep't of Human Servs.)*, 2015 ALJ 100006; *Pezley Group & State (Dep't of Human Servs.)*, 2014-MA-12 (ALJ 2014); *Rule & State (Dep't of Human Servs.)*, 2006-MA-03 (ALJ 2006); *Kuhn & State of Iowa (Comm'n of Veterans Affairs)*, 2004-MA-03.

PERB's decision to dismiss Kari's appeal was not based upon an irrational, illogical, or wholly unjustifiable application of law to fact. Iowa Code § 17A.19(10)(m).

### **CONCLUSION**

Kari's challenges to PERB's ruling fails on both grounds. The reasonable and proper interpretation of the relevant statutory provisions requires state public employees who are merit covered to follow the grievance process set out in section 8A.415. For disciplinary actions, a grievant initiates the process by filing a grievance with IDAS at step three within seven days following the effective date of the disciplinary action. Following a different step or completing a different process is precluded. Kari's interpretation of the underlying grievance filing timeline is inconsistent with the plain language of these statutory requirements.

Because Kari failed to file her grievance with IDAS within seven days following her termination, PERB lacked authority or jurisdiction over her particular case. Therefore, PERB correctly granted SJDDCS's motion and dismissed Kari's appeal.

PERB's ruling should be affirmed, Kari's Petition should be dismissed, and costs should be assessed to Kari.



**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the ruling of the Iowa Public Employment Relations Board is affirmed and the Petition for Judicial Review is dismissed.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are assessed to Petitioner Kari White.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number**      **Case Title**  
CVCV060163      KARI WHITE VS STATE OF IOWA ET AL

So Ordered

A handwritten signature in cursive script that reads "Jeanie Vaudt".

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Jeanie Vaudt, District Court Judge,  
Fifth Judicial District of Iowa