IN THE COURT OF APPEALS OF IOWA

No. 6-814 / 05-1504
Filed December 13, 2006

GARY MCCORMICK,
Petitioner-Appellant,

vs.

IOWA DIVISION OF LABOR,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Gary McCormick seeks further judicial review of the decision of the Iowa Division of Labor which was affirmed by the district court. **AFFIRMED.**

Larry J. Cohrt of L.J. Cohrt Law Firm, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Mark Hunacek, Assistant Attorney General, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Gary McCormick, an officer with the University of Northern Iowa Police Department, filed a complaint with the Iowa Division of Labor. He alleged that the University declined to equip officers with firearms and, thereby, failed to afford them a "safe work environment." He asked the Iowa Division of Labor to investigate his complaint. An administrator with the Division responded by stating, "Both OSHA and IOSH[A] continue to have no specific standards that address equipping employees with firearms as personal protective equipment."[1] She also noted that the personal protective equipment available to the officers "meets the intent of the standard." The administrator concluded, "[W]e continue to be unable to take any action on your complaint."

McCormick sought judicial review of this agency decision. He alleged that the Division had a "duty to investigate and enforce the requirements of the OSHA Act of 1970, including in particular, the General Duty Clause, 5(a)(1) and Section 88.4, Code of Iowa." He asked that the agency "be ordered to conduct an investigation and issue such appropriate orders as may be necessary to correct the foresaid workplace hazard." McCormick separately asked for an evidentiary hearing before the district court. The court denied this request and issued a final ruling.

In its ruling, the district court began by noting the "highly deferential standard" under which it was to review this type of agency action. The court cited the University's written policy that required officers "to carry a chemical

[1] OSHA refers to the Occupational Safety and Health Act of 1970, 29 U.S.C. section 651 et. seq., and IOSHA refers to the Iowa Occupational Safety and Health Act, Iowa Code chapter 88 (2005).

agent, impact weapon and Taser on their person"; to notify the Cedar Falls Police Department if there was a threat that weapons would be used and avoid contact until they were present; and to retreat when they could not safely effect an arrest or defend themselves. The court also cited the Division's determination "that the current safety measures in place are adequate under OSHA and IOSHA." The court concluded that the Division's action "was not an error of law," nor was it "unreasonable, arbitrary or capricious." McCormick seeks further judicial review.

We first address our standard of review. Agency action

> includes the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

Iowa Code § 17A.19(2) (2005). The Division's decision not to "take any action" on McCormick's complaint fell within this definition and was subject to the judicial review standards of Iowa Code section 17A.19(10). *See Greenwood Manor v. Iowa Dep't of Public Health*, 641 N.W.2d 823, 833-34 (Iowa 2002). The appropriate standard to be applied here is whether the agency action was "otherwise unreasonable, arbitrary, capricious, or an abuse of discretion." Iowa Code §17A.19(10)(n).

McCormick first contends the district court acted unreasonably in failing to grant his motion permitting him to call at least two witnesses, who as stated by the district court, "would testify that it is more dangerous for an unarmed security officer when confronting an armed assailant or when in any other dangerous situation to be unarmed than it would be to be in that same situation while

armed." The court stated "that testimony is self evident and there is no need to call witnesses to testify on such an open and obvious fact."

We discern nothing unreasonable in this ruling. A district court reviewing agency action other than a contested case proceeding has discretion to "hear and consider such evidence as it deems appropriate." Iowa Code § 17A.19(7). Such a hearing would be "for the limited purpose of highlighting what actually occurred at the agency level in order to facilitate the court's search for errors of law or unreasonable, arbitrary, or capricious action." *Sindlinger v. Iowa State Bd. of Regents*, 503 N.W.2d 387, 390 (Iowa 1993). The district court reasonably could have determined that the record created before the agency required no elucidation. McCormick's complaint letter was in that record, as was the agency's response. These documents set forth the nature of the complaint, the authority on which both parties relied, and the agency's resolution. This record was sufficient to allow the court to engage in meaningful judicial review.

McCormick next contends that the Division acted unreasonably in summarily rejecting his complaint without itself holding an evidentiary hearing. He cites no statutory or constitutional provision that would require such a hearing, and we discern none. *See* Iowa Code §§ 88.6(1)(b) (authorizing division to "inspect and investigate" work sites); 88.6(5) (authorizing special inspections if upon receipt of notification, the Division "determines that there are reasonable grounds to believe" a violation or danger exists); 88.6(6) (authorizing Division to "establish procedures for an *informal* review of any refusal by a representative of the commissioner to issue a citation" during an inspection) (emphasis added). *Cf*. Iowa Code § 17A.2(5) (defining "contested case" as "a proceeding . . . in

which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing."); *Sindlinger*, 503 N.W.2d at 389-90 (concluding agency's informal hearing process did not offend statute or Constitution); *Citizens' Aide/Ombudsman v. Rolfes*, 454 N.W.2d 815, 817 (Iowa 1990) (holding agency investigation was not a "contested case" but "other agency action"). We conclude the agency did not act unreasonably in failing to grant McCormick an evidentiary hearing.

McCormick finally challenges the Division's refusal to conduct an investigation of his complaint. When the Division receives an employee complaint about a suspected violation of a health or safety standard, the Division is initially obligated to determine whether "there are reasonable grounds to believe that such violation or danger exists." Iowa Code § 88.6(5). The Division is only obligated to proceed with an inspection if this threshold finding is made. *Id*. Here, the Division effectively determined that no reasonable grounds existed to proceed with an inspection. The agency pointed to the alternate protective gear that was required of university officers and the fact that neither the federal nor the state statute governing workplace health and safety contained "specific standards that address equipping employees with firearms as personal protective equipment." We agree with the district court that the agency did not act unreasonably, arbitrarily, or capriciously in making this determination. *Cf*. *West v. Dep't of Commerce*, 230 Wis.2d 71, 80, 601 N.W.2d 307, 311 (1999) (stating "OSHA was meant to address tangible, measurable hazards in the workplace,"

and the abstract threat West faced as a university police officer was not the type of threat Congress had in mind when it passed OSHA.).

AFFIRMED.