

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MICHELLE TUTTLE, Petitioner, v. ARCHER DANIELS MIDLAND CO., Respondent.	Case No. CVCV061544 RULING ON PETITION FOR JUDICIAL REVIEW
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I. Introduction

Before the court is Petitioner Michelle Tuttle’s (“Tuttle”) Recast Amended Petition for Judicial Review, filed April 7, 2023. Tuttle submitted a brief in support of her Petition. Respondent Archer Daniels Midland Co. (“ADM”) submitted a resistance and supporting brief. Tuttle submitted a reply. Both parties have submitted appendices containing hundreds of pages of documents. The court heard oral argument on August 4, 2023.

The court has reviewed the petition and supporting briefs and appendices the parties filed, considered their arguments and authorities, and now enters this ruling.

II. Procedural Background

The subject of the Recast Amended Petition for Judicial Review is a December 31, 2020 ruling of a Deputy Workers’ Compensation Commissioner (“Deputy”) on a motion ADM filed to quash an agency subpoena. Tuttle had caused to be served a subpoena on Chad Abernathey, M.D., a neurosurgeon ADM retained to perform an Independent Medical Examination (IME) on Tuttle. The subpoena, which was served on Dr. Abernathey at his home after regular business hours, demanded Dr. Abernathey produce documents and things in his possession relating to his IME of Tuttle, including, among other things, records, communications with ADM and its

counsel, and video images of Tuttle. Tuttle already had many of the records the subpoena demanded, but she was specifically trying to obtain copies of video images she believed ADM provided to Dr. Abernathey. ADM had explicitly denied these images existed in its written answers to Tuttle's interrogatories. In response to the service of the subpoena on Dr. Abernathey, ADM filed a Motion with the Workers' Compensation Commissioner ("Commissioner") to Quash or Enter Protective Order, and for Sanctions.

In the December 31, 2020 ruling on ADM's motion, the Deputy denied the Motion to Quash the subpoena on the ground that the Commissioner lacked jurisdiction to enforce subpoena compliance. The Deputy nonetheless granted ADM's Motion for Protective Order to limit the scope of the subpoena, finding that the subpoena was overly broad, because it demanded documents Tuttle was not entitled to receive under the rules of discovery. Finally, the Deputy granted ADM's request for sanctions, finding that Tuttle intended to harass Dr. Abernathey by having the subpoena served at his home after business hours, and because the documents demanded in the subpoena could have been obtained by filing a discovery motion rather than serving a subpoena.¹ The sanction imposed was to order Tuttle to pay ADM \$3,900, the cost of Dr. Abernathey's IME.²

On January 15, 2021, Tuttle filed a Motion to Reconsider, Enlarge, and Amend the ruling granting the protective order and imposing sanctions. On January 20, 2021, the Deputy denied the motion. On February 8, 2021, Tuttle filed an "Application for Interlocutory Appeal of Agency Adjudications on Contested Subpoenas and Request for Expedited Ruling." This was an

¹ Tuttle also caused subpoenas virtually identical to the subpoena served on Dr. Abernathey to be served on two employees of ADM. The Deputy granted the protective order with respect to the employees' subpoenas, but did not impose sanctions.

² ADM claims Dr. Abernathey refused to continue serving as an expert in the case because he was served a subpoena at his home.

intra-agency appeal to the Commissioner. *See* Iowa Admin. Code 876-4.27. On February 19, 2021, the Commissioner denied the Application. The Commissioner concluded that ruling on the Deputy's interlocutory order would not materially affect the final decision in the case and determining the correctness of that ruling on an interlocutory basis would not serve the interests of justice better than preserving the issue for review when all the issues in the case are decided.

On March 19, 2021, Tuttle filed in this court a Petition for Writ of *Certiorari*, pursuant to Iowa R. Civ. P. 1.1401, naming the Commissioner as the defendant. Tuttle alleged she was entitled to a writ of *certiorari* because the Commissioner exceeded its proper jurisdiction and acted illegally by entering a protective order purporting to limit documents Dr. Abernathey was obligated to produce in response to the subpoena and by imposing sanctions for counsel's actions in connection with service of the subpoena.

On May 11, 2021, the Commissioner filed a Motion to Dismiss the Petition for Writ of *Certiorari*. On May 21, 2021, ADM filed a Motion to Intervene in the writ of *certiorari* proceedings. On August 10, 2021, the court ruled on both the Motion to Dismiss and the Motion to Intervene. The court denied ADM's Motion to Intervene, but granted the Commissioner's Motion to Dismiss the Petition for Writ of *Certiorari*. With respect to the dismissal of Tuttle's petition, the court concluded that a writ of *certiorari* was not available because the exclusive means for Tuttle to challenge an action of the Commissioner was pursuant to the judicial review procedures in Iowa Code Chapter 17A.

On September 7, 2021, Tuttle filed a Notice of Appeal of the court's August 10, 2021 ruling. On January 25, 2023, the Iowa Court of Appeals issued its opinion, reversing the dismissal of the Tuttle's petition and remanding to this court for further proceedings. The Court of Appeals agreed with this court that Tuttle's exclusive means to challenge a decision of the

Commissioner was a petition for judicial review under Chapter 17A. However, the Court of Appeals also ruled this court should have treated Tuttle's Petition for Writ of Certiorari as a Petition for Judicial Review because, even though improper in form, the Petition otherwise satisfied the requirements of Chapter 17A.19.

On remand, the Court of Appeals ordered Tuttle to file a recast petition for judicial review that names ADM as the respondent instead of the Commissioner. Tuttle complied with that order on April 7, 2023, filing the "Recast Amended Petition for Judicial Review" that is now before the court.

III. Discussion

The Commissioner's Order that is the subject of Tuttle's Recast Petition for Judicial Review is interlocutory. *See Tuttle v. Iowa Workers' Comp. Com'r*, 991 N.W.2d 545, 2023 WL 4105478 at *5 (Iowa Ct. App. Jan. 25, 2023). As such, the Court of Appeals ordered this court to consider two questions before reaching the merits of Tuttle's claims: first, whether adequate administrative remedies have been exhausted; and second, whether review of the final agency would not provide an adequate remedy. *Id.* Only if both questions are answered in the affirmative will the court consider the merits of Tuttle's claims. *Id.*

A. Exhaustion of Adequate Administrative Remedies

There is no doubt Tuttle has available to her administrative remedies, which, if exhausted, would permit the same questions presented in her Recast Amended Petition for Judicial Review to be presented to the court at a later time, once there is a final agency adjudication of her workers' compensation claim. Counsel informed the court during oral argument that a hearing on all remaining issues in Tuttle's contested case has already occurred,

and a ruling from the Deputy is pending.³ Once the Deputy issues a ruling, either party may pursue intra-agency appeal to the Commissioner, and the Commissioner may again be presented the issue whether the Deputy erred in imposing sanctions and limiting the scope of Tuttle's subpoenas. *See* Iowa Code § 17A.15 (allowing for proposed decisions and intra-agency review); *Id.* § 86.24 (providing for appeals within the office of Workers' Compensation Commissioner, and that the decision of the workers' compensation commissioner is the final agency action). The Commissioner may affirm, modify, or reverse the Deputy's decision on those subjects. *Id.* § 86.24(2). The Commissioner's decision on the intra-agency review will be the final agency action and subject to judicial review.⁴

In short, in the event Tuttle pursues intra-agency appeal after the Deputy's forthcoming ruling, the Commissioner will have the opportunity to reverse or modify the Deputy's imposition of sanctions and order limiting the scope of Tuttle's subpoenas. Such a ruling would potentially render moot the issue presented in the Recast Amended Petition for Judicial Review that is the subject of this proceeding. On the other hand, if the Commissioner affirms the Deputy's December 31, 2020 Ruling, Tuttle will have the right to seek judicial review of such decision, which will then be final agency action. *See* Iowa Admin. Code r. 876-4.27.

Tuttle contends these administrative remedies available to her are not adequate, and therefore she should not be required to exhaust them before this court rules on the merits of her claims. Tuttle argues the Deputy's December 31, 2020 Ruling is a legal nullity because the Commissioner lacks jurisdiction to "adjudicate contested subpoenas." According to Tuttle, no

³ ADM's counsel represented that ADM identified as a contested issue the Deputy's December 31, 2020 ruling that is the subject of this judicial review proceeding, which means the Deputy could potentially re-visit his previous rulings imposing sanctions and limiting the scope of the subpoena.

⁴ The Commissioner may also remand to the deputy commissioner for further proceedings. A deputy's rulings after remand would be subject to intra-agency review, and ultimately judicial review.

adequate administrative remedy can exist where an agency has no power to act in the first place. In effect, Tuttle contends, the Commissioner is legally incapable of correcting a Deputy's ruling that is null and void from its inception. Tuttle argues she should not be required to pursue an administrative remedy that cannot provide her relief.

Tuttle may be correct the Commissioner is not authorized to limit the scope of an agency subpoena or to impose sanctions relating to the issuance such a subpoena. *See* Iowa Code § 17A.13(1) (“On contest, the court shall sustain the subpoena...[i]n proceedings for enforcement, the court shall issue an order...” (emphasis added)); *Dunlap v. Action Warehouse Co.*, 824 N.W.2d 545, 550 (Iowa Ct. App. 2021) (holding the Workers’ Compensation Commissioner has no authority to hold a party in contempt for failure to comply with a subpoena, as only the district court is authorized to impose contempt). But the lack of such authority does not render the Deputy’s ruling null and void from its inception and incapable of correction on intra-agency review or judicial review.

Tuttle equates the absence of delegated authority to the agency with a lack of subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court’s attention. *E.g., Klinge v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006). If a court enters a judgment without jurisdiction over the subject matter, the judgment is void and subject to collateral attack. *Id.* at 16. However, this case does not present a question of subject matter jurisdiction, because the Commissioner is authorized to hear and determine Tuttle’s contested workers’ compensation claims. *See* Iowa Code § 86.14 (in contested cases before the Commissioner “all matters relevant to a dispute are subject to inquiry”). Tuttle’s claim is that the Deputy’s ruling was *ultra vires*, or beyond the agency’s authority, because the

Deputy was not delegated the authority to rule on certain issues relating to agency subpoenas. An agency ruling that is *ultra vires* is not void from its inception, and a party may challenge such agency action through judicial review. Iowa Code § 17A.19(10)(b) (on judicial review the court may grant relief if the agency action is “beyond the authority delegated to the agency by any provision of law or in violation of any provision of law”); *see also Fogle v. Pella Corp.*, 752 N.W.2d 453, 2008 WL 2038798, at *1 (Iowa Ct. App. May 14, 2008) (stating that on judicial review a party challenging agency action can show “the action’s invalidity ... in a number of ways, including proof the action was *ultra vires*...”).

UE Local 893/IUP v. State, 928 N.W.2d 51, 65-66 (Iowa 2019), does not support Tuttle’s argument that she is entitled to bypass administrative remedies in this case. In *UE Local*, a public-employee union sued the State of Iowa to force the State to perform a collective bargaining agreement or to award damages for failing to comply with the agreement. The State moved to dismiss the union’s lawsuit on the ground that the union was required to exhaust administrative remedies with the Public Employee Relations Board (PERB) before seeking relief from the district court. *Id.* at 66. The Iowa Supreme Court rejected the State’s argument, and held the union was not required to exhaust administrative remedies because PERB did not have jurisdiction over breach of contract claims. PERB is authorized to adjudicate prohibited practice complaints, in which a party may allege an employer or union has interfered with employees’ collective bargaining rights. *See* Iowa Code § 20.10 (listing prohibited practices). But the court found there is no prohibited practice based upon breach of a collective bargaining agreement. *UE Local*, 928 N.W.2d at 66. In other words, the union was not required to exhaust administrative remedies because the agency could not remedy any part of the wrong for which the union was seeking relief. *Id.* at 66.

In contrast, this matter does not involve an issue where the Commissioner lacks jurisdiction over the underlying dispute. The Commissioner has jurisdiction over Tuttle's claim involving an alleged on-the-job injury. The question presented here is whether the Commissioner has the statutory authority within the context of a contested case to impose sanctions because of counsel's conduct in connection with the issuance of subpoena and/or to limit the scope of the subpoena. Whether the Deputy's ruling exceeded the authority delegated to the Commissioner by any provision of law or was in violation of any provision of law is a proper subject for judicial review. Iowa Code § 17A.19(10)(b). If the Deputy was wrong in imposing sanctions and/or limiting the scope of the subpoena, the Commissioner can correct the wrong on intra-agency review or the court can correct it on judicial review from the final agency action. As no stay has been issued in the underlying contested case, there is potential for conflicting rulings if this court decides the merits of Tuttle's claim on interlocutory judicial review while the same issue is pending before the Commissioner. The administrative remedies available to Tuttle in this case are adequate, and she is required to exhaust such remedies before seeking review in this court.

B. Would Review of Final Agency Action Not Provide an Adequate Remedy?

Final agency action does not provide an adequate remedy only if a party is faced with actual or imminent irreparable harm if the administrative proceedings are completed.

(A)bsent a showing that plaintiff is faced with the actual or imminent peril of sustaining irreparable harm that is, real and serious injury if the pending administrative proceedings are continued to their final completion, the sole allegation that the administrative agency has or is about to exceed its jurisdiction is not of itself sufficient to invoke injunctive relief to enable a court to examine forthwith the basis of the agency's jurisdiction.

Richards v. Iowa State Com. Comm'n, 270 N.W.2d 616, 624 (Iowa 1978) (alteration in original) (quoting *Thomas v. Ramberg*, 240 Minn. 1, 5, 60 N.W.2d 18, 20–21 (1953)).

Ordinarily, monetary losses caused by either administrative proceeding expenses or the deprivation of earnings are insufficient to constitute irreparable injury of substantial dimension. *Riley v. Boxa*, 542 N.W.2d 519, 522 (Iowa 1996). Tuttle is not being ordered to take any action in the interim, and no penalties, civil or criminal, would accrue by waiting for final review. Requiring Tuttle to wait for final review is not the practical equivalent of a decision on the substantive issue as in mootness situations. The delay may be inconvenient to the parties, but this does not affect the adequacy of the remedy. *See Richards*, 270 N.W.2d at 621. Therefore, the court finds final agency action will provide Tuttle an adequate remedy.

IV. Ruling

Tuttle has failed to exhaust adequate administrative remedies, and final review of the Workers' Compensation Commissioner's final agency action will provide an adequate remedy. Therefore, Tuttle is required to exhaust administrative remedies before seeking judicial review.

IT IS THEREFORE ORDERED that Plaintiff's Recast Amended Petition for Judicial Review is **DISMISSED**.



State of Iowa Courts

Case Number
CVCV061544

Case Title
MICHELLE TUTTLE VS IOWA WORKERS COMPENSATION
COMMISSIONER
Type: ORDER REGARDING DISMISSAL

So Ordered

A handwritten signature in black ink, appearing to read "Patrick D. Smith".

Patrick D. Smith, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-09-22 14:20:08