

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 NORMAN B. WOOD, III, *
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 Complainant, *
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 v. *
 *
 Secretary, DEPARTMENT OF *
 NATURAL RESOURCES, *
 *
 Respondent. *
 *
 Case No. 86-0002-PC-ER *
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FINAL
ORDER

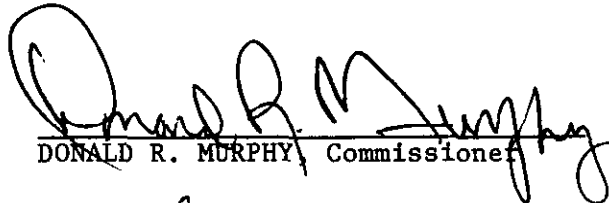
This matter is before the Commission for consideration of a proposed decision and order issued by the hearing examiner. The Commission has heard the parties' arguments and consulted with the examiner. The Commission adopts as its final resolution of this matter the proposed decision and order, a copy of which is attached hereto and incorporated by reference as if fully set forth, and adds the following comments.

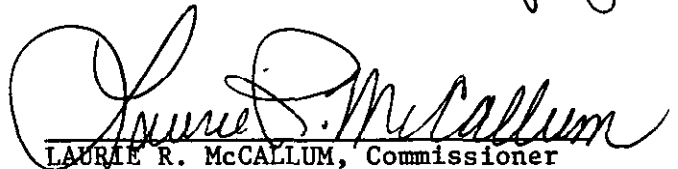
Complainant ranked 36th following the written examination. This was not high enough for further consideration under respondent's normal procedures. The only other way complainant could have received further consideration would be if he had been certified under the Handicapped Expanded Certification (HEC) program under § ER-Pers. 12.05(2), Wis. Adm. Code. Respondent rejected complainant for HEC certification because it determined he was not handicapped. Under the Fair Employment Act, it is unlawful to discriminate against any individual "because of" handicap, §111.322(1), Stats. It is difficult to perceive how respondent can be considered to have discriminated against complainant because of handicap when it determined he was not handicapped under the HEC program.

In oral argument before the Commission, complainant's attorney raised the spectre that the proposed decision would have the effect of barring anyone with poor vision like complainant's from employment as a warden. This does not necessarily follow. If an applicant scored high enough on the initial part of the selection process to merit further consideration and were rejected because of failure to meet the vision standard, he or she could challenge that standard by filing a charge of discrimination under the Fair Employment Act.

Dated: February 19, 1988 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

AJT:rcr
RCR03/2

Parties:

Norman B. Wood, III
Route 2, Box 74
Berlin, WI 54923

Carroll Besadny
Secretary, DNR
P.O. Box 7921
Madison, WI 53707

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PROPOSED
 DECISION
 AND
 ORDER

The above entitled matter is before this Commission on an appeal by complainant of an initial determination of "no probable cause" that respondent discriminated against complainant on the basis of being handicapped, when respondent failed to extend handicap status to him. A hearing was held on complainant's claims, testimony was given, exhibits were received into evidence and the parties submitted posthearing briefs. The following is based upon the record made at the hearing.

FINDINGS OF FACT

1. Complainant resides in Berlin, Wisconsin, where he is employed as a police officer. Since 1980 he also has been employed by respondent as a special conservation warden for Green Lake County.
2. Respondent, a state agency, is responsible for implementing state laws and, where applicable, federal laws that regulate the state's natural resources.
3. On June 5, 1985, complainant submitted to the Department of Employment Relations (DER) an application for a Conservation Warden 1 position and filed an application for Handicapped Expanded Certification

(HEC) — a verification of having a handicapping condition. The warden position has a vision standard, established by respondent, of not less than 20/100 uncorrected visual acuity in each eye.

4. Shortly thereafter, DER sent complainant a letter explaining the HEC process: The top three HEC applicants would be eligible for an interview. If offered a job, verification of applicant's handicap might be required by the employer. Verification could be obtained by contacting an appropriate specialist and obtaining a letter certifying the handicap.

5. Complainant took the written examination for the position and with an overall ranking of 36, which was not among the highest ranking 10% of the applicants, ranked first in the HEC list.

6. On August 29, 1985, after inquiring about his applicant status, complainant received a letter from respondent asking him to verify his handicap by sending a written certification from an appropriate specialist.

7. Because respondent's letter about handicap certification appeared inconsistent with DER's, complainant wrote DER. DER responded and informed complainant that respondent had been granted permission to request verification of handicapping conditions before offering the warden position.

8. Complainant also was informed by DER that to be eligible under HEC, applicants must have a handicapping condition, which cause them substantial difficulty obtaining or retaining employment.

9. Complainant obtained a written response from his optometrist which contained a report of complainant's most recent eye examination and the statement that complainant's vision was excellent with corrective glasses or contact lenses. The doctor's communication, sent to respondent September 25, 1985, also reported complainant's uncorrected acuity to be 20/500 in both eyes.

10. After receiving the doctor's report, a DNR personnel specialist conferred with DER's HEC coordinator and its Division of Merit Recruitment and Selection administrator. The doctor's report was interpreted by them to indicate complainant did not have a handicapping condition.

11. Respondent, by letter dated October 8, 1985, informed complainant that based on his optometrist's report, he, in their opinion, was not eligible for the HEC program and, since his exam score did not place him in the top group of all candidates, he would no longer be considered as a candidate for the warden position.

12. On January 6, 1986, complainant filed a charge of discrimination against respondent with this commission which included alleging respondent's failure to certify him as a handicapped person.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over complainant's claim of discrimination under §§230.45(10(b), 111.321 and 111.322(1), Wis. Stats.

2. Complainant failed to prove there is probable cause to believe respondent discriminated against him on the basis of handicap by denying him handicapped status under the Handicapped Expanded Certification program.

OPINION

The issue in this matter is whether there is probable cause to believe complainant was rejected by respondent as an applicant for a position as a conservation warden because of his poor eye sight. The plain evidence does not support this position.

Complainant, Norman B. Wood, III, applied for a position of Conservation Warden in the Department of Natural Resources. he also applied for

the Handicapped Expanded Certification stating that his uncorrected vision was less than 20/100. Wood took the exam for the warden position. His exam score was high enough to be interviewed for the position only if he acquired handicap status under the HEC program.

Wood's next step under the HEC program was to be certified by a specialist as having a disability which was severe enough to limit his ability to obtain or retain employment. The report from Wood's optometrist stated that Wood's uncorrected acuity was 20/500 for both eyes and that his visual performance was excellent with corrective glasses or contact lenses. Respondent, after consulting with the administrators of the HEC program — Department of Employment Relations personnel — informed Wood that he did not meet the HEC standards for certification and struck his name from the handicapped expanded certification list.

The evidences demonstrates that Mr. Wood, the complainant, failed to meet the criteria for being certified as a handicapped person under the HEC program. As a result, respondent had no choice but to remove him from the handicapped expanded certification list of candidates for its conservation warden position. Based on the record, respondent's only input into the HEC program was to follow its guidelines. No evidence was presented to the contrary.

The evidentiary facts in this controversy do not raise the issue of discrimination on the basis of an occupational disability as expressed in Brown County v. LIRC, 124 Wis. 3rd 560 (1985) or call into play the analysis of discrimination under the state Fair Employment Act set forth in Boynton Car Co. v. ILHR Dept., 96 Wis 2d 396, 406 (1980). Complainant was rejected by respondent as a candidate because it was determined he could not be certified to have a disability under the HEC program.

ORDER

Complainant's claim of discrimination against him by respondent is dismissed.

Dated: _____, 1987 STATE PERSONNEL COMMISSION

DENNIS P. MCGILLIGAN, Chairperson

DRM:jmf
JMF06/2

DONALD R. MURPHY, Commissioner

Parties:

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