

appeal from Wood v. DOT, 86-0037-P-22, 5/5/88; affirmed by
Milwaukee County Circuit Court, Wood v. Wis. Pers. Comm. & DOT,
88-CV-09-178, 5/10/89



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Personnel
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Marilyn L. Graves
Clerk

Madison, November 22, 1989

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Milwaukee, WI 53233
Hon. Laurence Gram
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You are hereby notified that the Court entered the following opinion and order:

#89-1310-FT - Charles Wood v. Wis. Personnel Commission and
Wisconsin Department of Transportation (L.C. No. 009-178)

Before Moser, P.J., Sullivan and Fine, JJ

Charles Wood appeals from the circuit court's judgment affirming a decision of the Wisconsin Personnel Commission. Pursuant to this court's order dated August 16, 1989, this case was submitted to the court on the expedited appeals calendar. Upon review of the briefs and record, we affirm the circuit court's judgment.

Wood applied for a state trooper position with the Department of Transportation (DOT). Wood took and passed physical agility, hearing, peripheral vision, and color vision tests. Instead of taking a visual acuity test, Wood

submitted a visual acuity report from his doctor showing that his corrected vision was 20/20 and his uncorrected vision was 20/400. DOT informed Wood that he was removed from consideration for the trooper position because he did not meet DOT's visual acuity standard for uncorrected vision.

Wood filed a discrimination claim under the Wisconsin Fair Employment Act (WFEA) with the Wisconsin Personnel Commission. After a hearing, the commission modified and adopted the proposed decision and order of the hearing examiner, holding that DOT did not unlawfully discriminate against Wood. Wood sought circuit court review of the commission's decision. Wood appeals from the circuit court's judgment affirming the commission's determination.

The scope of the court's review in this case is identical to that of the circuit court. *Samens v. LIRC*, 117 Wis. 2d 646, 657, 345 N.W.2d 432, 436 (1984). The application of the WFEA to the undisputed facts presented is a question of law. *See Id.* Generally, the black letter rule is that a court is not bound by an agency's conclusions of law. *West Bend Educ. Ass'n v. WERC*, 121 Wis. 2d 1, 11, 357 N.W.2d 534, 539 (1984). Under certain circumstances, the appellate court will defer to an agency's interpretation of the statute, if the agency has been charged with administration of the law in question. *Id.* at 11-12, 357 N.W.2d at 339. Deference should be accorded where a legal question is intertwined with factual

determinations or with value or policy determinations or where the agency's interpretation and application of the law is longstanding. *Id.* at 12, 357 N.W.2d at 539-40. In a situation where deference is appropriate, we determine whether the method utilized by the commission in reaching its decision was reasonable, even though we might have reached a different conclusion. *Nigbor v. DILHR*, 120 Wis. 2d 375, 387-88, 355 N.W.2d 532, 539 (1984).

To prove handicap discrimination under the WFEA, an individual must show that: (1) he or she is handicapped within the WFEA definition; (2) the employer discriminated against him or her because of the handicap; and (3) the employer's action was not legitimate under the applicable statutory exceptions. *Samens*, 117 Wis. 2d at 658, 345 N.W.2d at 437. In this case, the only element in dispute is whether DOT's action was legitimate under the applicable statutory exceptions.

The exceptions are contained in sec. 111.34(2), Stats. Sec. 111.34(2) provides that:

(a)...[I]t is not employment discrimination because of handicap to refuse to hire, employ, admit or license any individual, to bar or terminate from employment, membership or licensure any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment if the handicap is reasonably related to the individual's ability to adequately undertake the job-related

responsibilities of that individual's employment, membership or licensure.

(b) In evaluating whether a handicapped individual can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity, the present and future safety of the individual, of the individual's co-workers and, if applicable, of the general public may be considered. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of handicapped individuals in general or a particular class of handicapped individuals.

(c) If the employment, membership or licensure involves a special duty of care for the safety of the general public, including but not limited to employment with a common carrier, this special duty of care may be considered in evaluating whether the employe or applicant can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of handicapped individuals in general or a particular class of handicapped individuals.

The question presented on appeal is whether the commission could reasonably conclude that DOT's refusal to hire Wood was lawful. Wood argues that the commission erred in concluding that DOT's refusal to hire him was proper because: (1) DOT failed to individually evaluate whether he could adequately undertake a trooper's job responsibilities; (2) DOT wrongly decided that his handicap was reasonably related to his ability to perform the responsibilities of the job, including a trooper's special duty of care for the safety

of the public; and (3) DOT unreasonably refused to accommodate his handicap.

Expert testimony at Wood's hearing established that the quality of vision, unlike many disabilities and impairments, can be accurately measured, so that a person's capacity to see can easily be determined if visual acuity information is provided. Once DOT received the information that Wood's uncorrected vision was 20/400, it could properly evaluate his individual ability to perform the job without personalized testing.

Wood has uncorrected visual acuity of 20/400. The commission found that a person with 20/400 vision can focus within a range of fifteen inches only. Beyond fifteen inches his or her sight progressively blurs. The commission could reasonably conclude that the quality of a trooper's vision is reasonably related to his or her ability to use a firearm and function in life-threatening situations.

Whether an employer can reasonably accommodate a handicap is a determination best made by the trier of fact. See *American Motors Corp. v. DILHR*, 93 Wis. 2d 14, 40, 286 N.W.2d 847, 859 (Ct. App. 1979), *rev'd on other grounds*, 101 Wis. 2d 337, 305 N.W.2d 62 (1981). We affirm the commission's exercise of its fact-finding function on the accommodation issue.

Upon the foregoing reasons,

IT IS ORDERED that the trial court's judgment is affirmed.

Marilyn L. Graves
Clerk of Court of Appeals

appeal from Wood v. DOT, 86-0037-PC-ER, 5/5/88; 88-CV-9178
aff'd by Milw Cty Cir Ct, Wood v. Wis. Pers. Comm & DOT,
88-CV-0978, 5/10/89



Office of the Clerk
SUPREME COURT

STATE OF WISCONSIN

Hon. Laurence C. Gram, Jr.
Circuit Court for Milwaukee County
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Madison, January 16, 1990

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Personnel
Commission

The Court today announced an order in your case as follows:

No. 89-1310-FT Wood v. Wisconsin Personnel Comm'n and Wisconsin DOT
(T.C. #009-178)

A petition for review pursuant to sec. 808.10, Stats., having been filed on behalf of petitioner-appellant-petitioner, Charles Wood, and considered by the court,

IT IS ORDERED that the petition is denied, without costs.

MARILYN L. GRAVES

Clerk of Supreme Court.