

certified as an eligible for the position by respondent DER because his examination score, by itself, was not high enough to place him on the certification list and because DER did not consider the complainant to be visually handicapped so as to qualify for handicapped expanded certification.

3. Only those persons whose names were on the certification list could be considered by DNR for appointment to a Conservation Warden position.

4. DNR maintains a vision standard for the Conservation Warden position requiring a candidate's uncorrected vision to be no worse than 20/100. DNR also conducts personal interviews and administers an agility test prior to offering a Conservation Warden position to a candidate.

5. Complainant possesses uncorrected vision substantially worse than the 20/100 standard.

6. Because his name was not on the certification list, DNR did not consider complainant for appointment and, therefore, did not interview him, have him perform the agility test or apply the vision standard to him.

CONCLUSION OF LAW

Complainant lacks standing to challenge respondent DNR's use of a vision standard.

OPINION

An appropriate summary of the case law applicable to the issue of standing is found in Fox v. DHSS, 112 Wis 2d 514, 524-25, 334 NW 2d 532 (1983):

This court has established a two-part analysis, similar to the federal test, for determining whether parties seeking to challenge an administrative rule have standing. The first step is to determine "whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law." The first step has been compared to the federal test: Does the challenged action cause the petitioner injury in fact?

This court has frequently held that the law of standing in Wisconsin should not be construed narrowly or restrictively. Where an actual injury is demonstrated, even a "trifling interest" may be sufficient to confer standing. To have standing, the petitioner must have "suffered 'some threatened or actual injury resulting from the putatively illegal action'. . ." Although the magnitude of the injury is not determinative of standing, the fact of injury is.

The actual injury requirement was recently explained by the United States Supreme Court in Los Angeles v. Lyons, ___ U.S. ___, 51 U.S.L.W. 4424 (1983). In Lyons, the Court wrote that "Abstract injury is not enough. The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.'" Slip opinion at 5-6 (cites omitted).

In his brief, complainant contends, without any supporting argument, that "[t]here can be no question that an interest of complainant is threatened and, in fact, injured by the existence of the visual acuity standard maintained by DNR." The Commission does not accept that assertion.

The only way that the visual acuity standard can adversely affect the complainant is if the test prevents him from being hired as a Conservation Warden. That has not occurred. DNR could not even consider the complainant for the position because complainant's exam score was too low for him to be on the certification list. Only if the complainant is able to demonstrate that respondent DER discriminated against him by not considering him visually handicapped so as to qualify for expanded certification and then only if complainant also passed the interview stage and the agility test could the visual acuity standard have been determinative. The complainant's contention that he would have been rejected due to the visual acuity standard is conjectural. Therefore, the allegedly illegal acuity standard has not caused complainant an actual injury and the complainant lacks standing to pursue his claim against DNR.

ORDER

That portion of the complaint relating to the Department of Natural Resources' visual acuity standard is dismissed. DNR is, therefore, dropped as a party.

Dated: July 11, 1986

STATE PERSONNEL COMMISSION

Dennis P. McGilligan
DENNIS P. MCGILLIGAN, Chairperson

Donald R. Murphy
DONALD R. MURPHY, Commissioner

Laurie R. McCallum
LAURIE R. MCCALLUM, Commissioner

KMS:vic
VIC03/1

Parties

Charles Wood
c/o H. Stanley Riffle
P. O. Box 1348
Waukesha, WI 53187-1348

Howard Fuller
Secretary, DER
P. O. Box 7855
Madison, WI 53707

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