



(DER). At the same time, he filed an Application for Handicapped Expanded Certification (HEC).

2. On the Handicapped Applicant's Supplement form, complainant stated the nature of his handicap was "Uncorrected vision worse than 20/100 in both eyes." According to complainant's optometrist, Dr. David Johanknecht, complainant's uncorrected acuity is 20/500 for both eyes.

3. DNR has established vision standards of "uncorrected visual acuity of not less than 20/100 each eye" for the position of Conservation Warden.

4. On June 11, 1985, complainant received a letter from DER explaining the HEC process. This letter stated:

There are two ways in which you may be called for an interview. The first one is if you are among the highest ranking 10% of the applicants on the list, not to exceed the top ten. The second one is if you are among the three highest ranking HEC applicants below that top 10% group.

\* \* \*

If you are called for an interview and offered a job, it is possible that the person who makes the appointment will want to verify your handicap. This verification will only be done when, in the judgment of the appointing authority, it is necessary to confirm the vocational/occupational handicap you are claiming.

5. Complainant wrote the test administered by DER and was advised on August 17, 1985, that he had scored H92.62 (H indicating handicapped status), with an overall ranking of 36.

6. On August 27, 1985, complainant learned of another applicant for the position for whom a background investigation had been conducted. He became concerned about his own status and left a message for Ms. Ruth Anderson, of respondent's personnel office, to contact him.

7. Ms. Anderson returned his call and he was advised he had ranked first on the HEC list. He was also advised he would be receiving a letter in regard to having his handicapping condition verified before

September 27, 1985. An identical letter was sent to all persons on the HEC list.

8. Complainant received the letter referred to by Ms. Anderson on August 29, 1985. The letter contained the statement, "Eligibility for this program (HEC) constitutes a handicapping condition which limits an individual's ability to obtain and/or retain employment in general," and asked him to:

Please provide a brief letter from your physician, psychologist, psychiatrist or other appropriate rehabilitation professional verifying that the handicapping condition you claim does indeed exist and that it limits your ability to obtain and/or retain employment in general.

9. Complainant was concerned because he had not been involved in any stage of the hiring process except for writing the exam, and according to the information he had previously received from DER, verification of his handicap would not be required until a job offer was made. He was also concerned about the statement defining a handicapping condition, because he thought it differed from that contained in the information previously received from DER. Because of this concern, he wrote to Ms. Georgina Taylor at DER on August 30, 1985.

10. Ms. Taylor wrote to complainant on September 4, 1985, stating:

The language used in the letter you have received from the Department of Natural Resources (DNR) does not constitute an updated definition of the HEC program eligibility criteria. To be eligible to be hired under HEC, qualified applicants must have a handicapping condition which results in substantial difficulty in their obtaining and/or retaining employment. This substantial difficulty has a limiting effect on this group of applicants, hence the use of the word "limits" in DNR's letter. In addition, this difficulty or limitation has to affect the person's total ability to obtain and/or retain employment of various kinds and not be limited to one occupation in particular.

\* \* \*

Under present procedures, verification of the handicapping condition claimed for HEC eligibility may occur at the time when a HEC

applicant is offered a job. In the case of Conservation Warden 1, DNR has requested, and has been granted, an exception to this procedure because of the substantial cost of their prescreening process which involves background checks and physical and medical examinations.

11. Mr. Wood obtained a statement from Dr. Johanknecht which contained the results of complainant's last eye examination and the statement, "Mr. Wood's visual performance is excellent with corrective spectacles or contact lenses." This was sent to DNR and was received on September 25, 1985.

12. By letter dated October 8, 1985, from Ms. Anderson, complainant was informed:

...since the doctor has not stated he considers your condition to constitute a handicapping condition, it is our opinion you are not eligible for employment consideration under the Handicapped Expanded Certification (HEC) program. The doctor's report has been reviewed by Georgina Taylor, HEC Coordinator ...

...Since your regular examination score does not place you in the top group considered for employment, we are now required to remove your name from the group of candidates being considered.

13. In conversations with the investigator, Ms. Taylor emphasized HEC is based on the substantially limiting aspects of whatever disability is under consideration and it must limit the individual for "not just one job but all jobs." She said the "key factor" is "not any disability qualifies for HEC." Ms. Taylor said she cautions people who inquire about HEC that, if the disability/handicap is not verified as substantial, there is a possibility of an illegal hire.

14. Mr. Wood was employed as a limited term employee by respondent from May through August for the years 1976 to 1979. He obtained a B.S. in Criminal Justice in May, 1980. He has been employed from June, 1980, to the present as a police officer for the City of Berlin, Wisconsin, and

has been a special conservation warden for respondent for Green Lake County since September, 1982, to the present.

DECISION

This case is virtually on all fours with another standing case decided by the Commission on July 11, 1986, Charles Wood v. DER/DNR, No. 85-0008-PC-ER. The complainant in that case also had not scored high enough on the written exam to have been certified on a competitive basis, and was denied expanded certification as handicapped because DNR determined his vision was not such as to qualify him as visually handicapped. The Commission held as follows:

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.

This is exactly the situation presented by the instant case. Complainant's exam score was too low for him to have been certified for further consideration under the normal civil service competitive process, §230.25(1), Stats., and he was not certified as handicapped on an expanded certification, §230.25(1n)(a) 3., Stats. The only way he could be in a position to be injured by the allegedly improper vision acuity standards would be if he were to successfully litigate his exclusion from the handi-


capped expanded certification and then successfully pass the other parts of the screening.<sup>1</sup>

CONCLUSION OF LAW

The complainant lacks standing to challenge respondent's vision standards.

Dated: April 15, 1987 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

AJT:jmf  
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<sup>1</sup> If complainant were to successfully challenge a vision standard (uncorrected) that was more restrictive than his actual uncorrected vision, this would appear to undermine his claim for consideration as handicapped for purposes of consideration for handicapped expanded certification.