

1 STATE OF WISCONSIN IN CIRCUIT COURT WAUSHARA COUNTY

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NORMAN B. WOOD, III,  
Petitioner,

DECISION

-vs-

Case No. 87-CV-80

**RECEIVED**

STATE PERSONNEL COMMISSION,  
Respondent.

MAY 6 1988

**Personnel  
Commission**

TELEPHONIC MOTION HEARING held in the above  
entitled matter before the Honorable Jon P. Wilcox, Circuit Judge  
in and for Waushara County, on the 3rd day of May, 1988.

APPEARANCES:

H. STANLEY RIFFLE, Attorney at Law, Waukesha, Wisconsin,  
representing the Petitioner.  
BRUCE A. OLSEN, Assistant Attorney General, representing  
the Respondent.

1 THE COURT: As agreed between the Court and  
2 counsel, the Court allowed the oral arguments to be held  
3 on the telephone. As far as the Court's decision, the  
4 Court is ready to make its decision relative to the case  
5 of Norman B. Wood, III v. State Personnel Commission.  
6 The Court is making its decision relative to what's before  
7 the Court based upon the entire record which has been  
8 submitted, the briefs which have been submitted and the  
9 oral arguments the Court has just listened to. The  
10 Court would note that this action was commenced pursuant  
11 to Chapter 227 to review a decision of the State Personnel  
12 Commission which basically concluded that the the Petitioner,  
13 Norman wood, had no standing to challenge the visual  
14 acuity standard set by the Department of Natural Resources.  
15 Now, in this case, the Department of Natural Resources  
16 and the State Personnel Commission have joined and they  
17 served two motions, one of which they dropped, which was  
18 no subject matter jurisdiction and that was dropped volun-  
19 tarily. The second portion was a motion to dismiss on  
20 the ground that the Commission's decision was not re-  
21 viewable by this Court and was not appropriate for review  
22 under Chapter 227. So, the question here is whether or  
23 not the Commission's decision that Mr. Wood, who is the  
24 petitioning party, lacked standing to challenge the visual  
25 acuity standard of the Department of Natural Resources

1 and whether that was a reviewable decision by this Cir-  
2 cuit Court. We will note that Mr. Wood is a resident  
3 of rural route Berlin, Wisconsin and he is a resident of  
4 Waushara County. Both counsel have indicated to this  
5 Court that from a factual standpoint, that the facts are  
6 basically undisputed. For the record, I am not going  
7 to go through them at length. However, I would note that  
8 Mr. Wood did apply for the position of a conservation  
9 warden and that was done back on June 5, 1985 and he also  
10 applied for Handicapped Expanded Certification (HEC).  
11 There are substantial facts in the record that his un-  
12 corrected visual acuity was 20/500. The petitioner, after  
13 he applied, wrote an examination and he also received  
14 information that he had scored 36th on the examination.  
15 That was within the non-handicapped group. He scored  
16 first on the HEC test which was the Handicapped Expanded  
17 Certification group. After that, Mr. Wood was asked to  
18 verify that he was handicapped in accordance with the  
19 standards set down. His eye doctor reported that his  
20 visual performance was excellent with corrective spectacles  
21 or contact lenses. I believe, basically, he was found  
22 not to be eligible for HEC consideration. Therefore, we  
23 are back to the situation where he was 36th in the exam-  
24 ination and did not, according to the state standards,  
25 qualify within the top ten names that would be certified

1 to the Department for consideration. The next event that  
2 happened is that Mr. Wood filed a charge of discrimination  
3 with the Personnel Commission indicating that the failure  
4 of the Department to certify him as handicapped and the  
5 DNR's use of a vision standard both constituted handicap  
6 discrimination. The Court has been informed by both  
7 counsel that the portion relating to the Handicapped Ex-  
8 panded Certification, which I believe was appealed, is  
9 not considered under this particular decision. In other  
10 words, I am only considering whether or not the petitioner  
11 did or did not lack standing to challenge the vision  
12 standard. So, that more or less is a brief overview of  
13 the factual situation. The Court indicated there is no  
14 argument on the facts as stated by both Attorney Riffle  
15 and Attorney Olsen and as pointed out in the initial hear-  
16 ing which was held before the State Personnel Commission.  
17 The Court here is looking at several cases which I am  
18 going to cite and I'll refer back to them. The first one  
19 is Fox v. Department of Health and Social Services, 112 Wis.  
20 2d 514 (1983) The other is Wisconsin Environmental Decade  
21 v. Public Service Commission (WED I), 69 Wis. 2d 1, 9,  
22 230 and this is a 1975 case. The other case is Milwaukee  
23 Brewers v. DH&SS, 130 Wis. 2d 56 which is a 1986 case.  
24 Having stated the cases which the Court will be reviewing  
25 and basing its decision on, the Court would want to point

1 out that the question of standing more or less hinges  
2 upon the relationship that Mr. Wood had to the issue of  
3 application for becoming a warden. The question before  
4 the Court is, first of all, did he show a direct affect  
5 on his legally protected interest. We are dealing here  
6 basically with Sec. 227.25 Wis. Stats. which indicate,  
7 ". . .Administrative decisions which adversely affect the  
8 substantial interests of any person, whether by action or  
9 in action, whether affirmative or negative in form,  
10 . . .are subject to review as provided in this chapter."  
11 One of the considerations that the Court has to look at  
12 is whether or not there was an actual direct relationship  
13 or whether it fell into a speculative or hypothetical  
14 event. The case law seems to indicate, as pointed out by  
15 both Attorney Riffle and Attorney Olsen, and Attorney  
16 Riffle particularly points out that Mr. Wood found himself  
17 in a "Catch-22" or the Court would say, which came first,  
18 the chicken or the egg, situation. Under the standing  
19 test and using the two-step analysis which was pointed  
20 out in the Fox v. Department of Health and Social Services  
21 case, first the agency decision must directly cause in-  
22 jury to the interest of the party. Second, the interest  
23 must be recognized by law. Now, as far as a direct in-  
24 jury, the Court has to look back to the factual situation.  
25 The Court is considering the two-step analysis which

1 is pointed out, that basically was there a causal con-  
2 nection or a connection between the DNR's visual acuity  
3 standard and Norman Wood's inability to obtain a job as  
4 a warden and was it so conjectural or hypothetical as to  
5 strain the imagination. The Court is quoting some of the  
6 language from some of the cases, particularly the Fox and  
7 the Milwaukee Brewers cases. The Court also would note  
8 that I have listened to both counsel and I believe that  
9 Attorney Riffle seems to indicate that Courts are opening  
10 this up and that really this should be something that  
11 there is no question of standing. The problem the Court  
12 has with that argument is that recognizing that Mr. Wood  
13 in this case actually took a test and the test was one  
14 of the four so-called steps, as indicated by Mr. Olsen.  
15 The examination was presented and he scored 36th on that  
16 examination. So, based on the test itself, it would  
17 appear to this Court that the DNR couldn't even consider  
18 him because his exam score was too low to be on the certi-  
19 fication list. I realize that Attorney Riffle is indi-  
20 cating, well, basically even if he passed that test and  
21 if he passed the interview and if he passed the physical  
22 test, that he would not be a conservation warden because  
23 of the visual acuity test. However, the Court feels that  
24 based on the case law and based upon the facts of this  
25 particular case, that this is not what happened. I have

1 to look at what happened, not what Mr. Wood wishes would  
2 happen. Basically, the Court would indicate that the  
3 undisputed fact shows to this Court that if I were to  
4 allow this individual to have standing, then it certainly  
5 would fall into the area of conjecture that he would  
6 ever get as far as Step 4, and particularly, this Court  
7 is concerned that the case law as stated in Fox seems to  
8 indicate to this Court that the sequence of events--and  
9 I'm quoting this out of the brief of the State Personnel  
10 Commission. It seems to indicate, ". . .the sequence of  
11 events may not be conjectural or hypothetical. In addition,  
12 there must be a close causal relationship between the  
13 alleged injury and the challenged administrative action."  
14 The Court believes, based upon all the facts of this case  
15 and, as an aside, it would seem until the Commission  
16 determines, and apparently this may or may not be on  
17 appeal, that the DNR discriminated against him by removing  
18 him from the HEC test, then the Court would feel that is  
19 the direction he would have an opportunity to go with.  
20 But here it seems, and I guess Attorney Riffle answered  
21 this, it really doesn't make any difference whether he  
22 took the test or not, he still should have standing to  
23 challenge any one of the steps, the interview, the test,  
24 the physical test or the visual acuity. The Court feels  
25 in that particular area, that it would be conjectural or

1 hypothetical and, strictly with the facts set forth in  
2 this case, it would seem to this Court that the only way  
3 that the visual acuity standard could be challenged is  
4 if he got that far and only if Mr. Wood could be able  
5 to demonstrate, at least directly demonstrate that the  
6 respondent discriminated against him by not considering  
7 him as visually handicapped as to qualify for Handicap  
8 Expanded Certification and then only after he went through  
9 the other stages would he actually have standing to com-  
10 plain and pursue his claim against the Department of  
11 Natural Resources. Based upon the Court's understanding  
12 of this case, based upon the oral arguments and the briefs  
13 submitted as well as the facts in the case, the Court is  
14 granting the State Personnel Commission's motion to dis-  
15 miss based on the fact that the petitioner, Norman Wood,  
16 lacks standing to challenge the DNR visual acuity standard  
17 because he could not show that he was directly affected  
18 by it. That's the ruling of the Court. The Court would  
19 ask that Attorney Olsen draft the Court order and submit  
20 it to Attorney Riffle and then submit it to the Court.  
21 Can you do that within ten days?

22 MR. OLSEN: Certainly.

23 THE COURT: Basically, I wanted to indicate that  
24 the Court feels that Mr. Wood would have to show a direct  
25 affect or a causal relationship and I don't feel, based



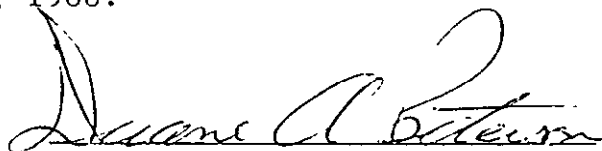
1 on the case law as I read it, that he got that far and  
2 therefore he has no standing to challenge the visual  
3 acuity test. That's basically the Court's decision.  
4 That concludes the hearing.

5 (Whereupon, the motion hearing in the above matter  
6 heard on the 3rd day of May, 1988, was concluded.)  
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10 STATE OF WISCONSIN)  
11 ) SS.  
12 COUNTY OF WAUSHARA)

13 I, Duane A. Peterson, Circuit Court Reporter in and for  
14 Waushara County, Wisconsin, do hereby certify that the above and  
15 foregoing is a true and complete transcript of the Court's decision  
16 in the above matter given at the time of the telephonic motion  
17 hearing held on the 3rd day of May, 1988.

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20 Duane A. Peterson  
21 Circuit Court Reporter  
22 Waushara County, Wisconsin  
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