



STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

CHARLES WOOD.

Plaintiff,

-vs-

CASE NO. 88-CV-89-178

WISCONSIN PERSONNEL COMMISSION and
WISCONSIN DEPARTMENT OF TRANSPORTATION,

RECEIVED

Defendants.

MAY 12 1989

MEMORANDUM DECISION

Personnel
Commission

This is a proceeding instituted on May 23, 1988, pursuant to Section 111.375(2) and Chapter 227., Stats., to review a final decision of the Wisconsin Personnel Commission under the Wisconsin Fair Employment Act, Sections 111.31 - 111.395, Stats. The Commission decided that the Wisconsin Department of Transportation did not unlawfully discriminate against the petitioner Charles Wood, on the basis of handicap when it failed to hire him for a state trooper position. The Commission's action modified and adopted a proposed decision and order of a hearing examiner issued on April 1, 1988.

On May 5, 1988, the Commission made its final decision as follows:

This matter is before the Commission on an appeal of a charge of discrimination on the basis of a

handicap filed by Charles G. Wood, Complainant against the Department of Transportation (DOT), relating to DOT's failure to hire complainant for a state trooper position. A hearing was held on complainant's allegations, testimony was given, exhibits were received as evidence and post hearing briefs were filed by the parties. The following findings, conclusions, decision and order are based upon the record made at the hearing.

FINDINGS OF FACT

1. Complainant Charles G. Wood is a resident of West Allis, Wisconsin, and is employed by the Waukesha County Sheriff's Department.
2. Respondent, Department of Transportation (DOT), is a state agency responsible for transportation administration.
3. Mr. Wood applied for employment with DOT as an enforcement cadet for a State Patrol Trooper I position. On December 15, 1984, he took the required examination for that position.
4. Mr. Wood ranked 1105 among those who took the examination and was not listed in the group of persons Certified by the Department of Employment Relations (DER) to DOT as the top 250 candidates, i.e., the 250 who scored highest on the examination.
5. At the time Mr. Wood applied for the state patrol position, he also submitted to DER a form to establish that he was handicapped and eligible under the Handicap Expanded Certification program (HEC) to be placed on a certification list of handicapped applicants.
6. Mr. Wood was given HEC status based upon his written request for handicapped status. DER did not seek verification of Wood's HEC eligibility. If the employer decided to hire Wood, he would then be required to verify his handicap at the request of his employer.
7. DOT invited Wood for an interview and to take several physical aptitude tests.

8. Mr. Wood took and passed a physical agility test and a hearing test. He also passed peripheral vision and color vision tests, but instead of taking the visual acuity test, provided respondent with a visual acuity report from his doctor. Mr. Wood's visual acuity report showed his eyesight to be 20/20 corrected and 20/400 uncorrected.
9. Respondent's vision standards for enforcement cards are 20/20 corrected and 20/100 uncorrected.
10. In a letter dated May 29, 1985, respondent informed Mr. Wood that he did not meet its vision standards and no longer would be considered as a candidate for the cadet position.
11. On March 4, 1986, Wood filed a charge of discrimination with this commission, claiming respondent failed to hire him for an enforcement cadet position because of his eyesight keenness level.
12. The State Patrol Trooper 1 position is an entry-level trooper position. The primary duties of this position are enforcing state traffic and criminal laws, rules and regulations, while patrolling state highways. These duties include issuing warnings or citations, making arrests and taking suspects into physical custody and transporting prisoners to unit headquarters or jail.
13. Troopers carry out their duties usually working alone and in all kinds of weather conditions.
14. While performing duties, troopers are confronted with a great variety of potentially dangerous circumstances. Some are of a life-threatening quality.
15. Good vision is vital to troopers in performing their duties. In some instances, good vision, without any reliance upon vision correction devices, is critical, due to the risk that corrective lenses could be rendered inoperative during physical altercations. extreme weather

conditions chemical exposure, etc.

16. Respondent's current visual acuity standard has been the same since 1978, except in 1963 the binocular vision was changed to include 20/20 corrected vision. Respondent's prior visual standards extend back to 1951.
17. Twenty-twenty (20/20) vision is optimal vision. It is what most physically normal people can see at twenty feet.
18. Complainant's uncorrected vision of 20/400 is twenty times worse than 20/20 vision.
19. A person with 20/400 vision can focus out to 15 inches. Beyond 15 inches, his sight becomes progressively blurred. Such a person can only be 20 feet away to see the same object a person with optimal vision can see 400 feet away.
20. A person with 20/400 vision is unable to recognize a person 20 feet away or determine the sex of that person.
21. Respondent stipulated that complainant's uncorrected vision of 20/400 is a handicap.
22. Persons with contact lens cannot wear them every day over an extended period of time.
23. Hard contact lens can be worn twelve to sixteen consecutive hours. Soft contact lens can be worn longer, but must be hydrated in the eye for maximum vision.
24. Wind, high temperatures and low humidity dry out soft lens, causing eye irritation and loss of visual acuity.
25. Dust, foreign bodies and toxics are hazardous to contact lens. Often, these hazards require the contact lens wearer to remove the lens.
26. Respondent has neither a visual acuity standard for permanent state troopers who have passed beyond the enforcement cadet stage, nor periodic

visual acuity testing for such employes.

27. As a general rule, between the ages of 20 and 50, there is not significant change in a person's vision; it remains relatively stable. After age 50, a person's vision may begin to gradually deteriorate as the person progresses in age.
28. Most Wisconsin state troopers are between the ages of 20 and 40. Retirement is at age 55.
29. Good visual acuity is reasonably related to a state trooper's ability to adequately perform his/her duties and is reasonably necessary to the safe operation of that work.
30. Uncorrected visual acuity standards are a legitimate method of establishing job qualifications of good visual acuity.
31. Complainant's uncorrected vision of 20/400 is not adequate to perform the duties of a state trooper and respondent's rejection of him for such a position is based solely on this consideration.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over complainant's claim of discrimination under Section 230.45(1)(b) and 111.375(2), Stats.
2. Complainant has satisfied his burden of showing by a preponderance of credible evidence that he is handicapped and respondent rejected him for employment because of his handicap.
3. Respondent has satisfied its burden of showing by a preponderance of the evidence that the employment in question involves a special duty of care for the safety of the general public, and that the refusal to hire complainant was reasonably related to complainant's ability to adequately undertake the job-related responsibilities of said employment, including the special duty of care for the general public.

4. Respondent has satisfied its burden of showing by a preponderance of the evidence that it did not refuse to reasonably accommodate complainant's handicap.

It is this Court's understanding that the petitioner does not dispute any of the findings and this Court is therefore bound by those findings.

This Court is of the opinion that the Findings as made by the Commission adequately support its Conclusions of Law and, therefore, their decision must be affirmed.

Dated at Milwaukee, Wisconsin, this 10th day of May, 1969.

BY THE COURT:

Laurence C. Gram, Jr. (s)

Laurence C. Gram, Jr. - Br. #33

cc: Atty. H. Stanley Riffle
Atty. Stephen M. Gebota