

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

Bill Cooper

COMPLAINANT,

v.

Re: Docket No. ER-355-77

WV Department of Natural Resources

RESPONDENT.

FINDINGS OF FACT  
CONCLUSIONS OF LAW &  
FINAL ORDER

I. PROCEEDINGS:

This case came on for hearing on the 1st day of September, 1982, at St. John's Episcopal Church, 1105 Quarrier Street, Charleston, WV, before Hearing Examiner Theodore R. Dues. The Complainant appeared in person and was represented by Nelson Bickley, Esquire. Assistant Attorney General Mary Lou Newberger, represented the West Virginia Human Rights Commission and Nelson Bickley, Esquire. The Respondent appeared by its counsel Assistant Attorney General Robert Pollit and Assistant Attorney General Bruce Ray Walker.

On 18th March, 77, the Complainant filed a complaint with the West Virginia Human Rights Commission alleging that the Respondent WV Department of Natural Resources had discriminated against him on the basis of his race for failing to hire him even though he passed the Civil Service Exam and he believed that less qualified whites were hired. The West Virginia Human Rights Commission issued a letter of determination finding probable cause to believe that the Human Rights Act had been violated in January 1979.

On July 29, 1982, the Human Rights Commission, by Howard D. Kenney, Executive Director, served written notice of public hearing upon the parties pursuant to WV Code §5-11-10, setting the date for public hearing for September 1, 1982. No answer was filed by Respondent.

Respondent filed a Motion to Dismiss at the close of Complainant's case-in-chief. Argument was heard on October 7, 1982 with all counsel and the Complainant present.

After full consideration of the entire testimony, evidence, motions, briefs and arguments of counsel, and post-hearing submissions of evidence, and based upon the following summary and discussion of the evidence, the Hearing Examiner recommends that the Commission make the following Findings of Fact and Conclusions of Law.

#### FINDINGS OF FACT

1. Complainant is a black male.
2. Respondent is an agency of the State of West Virginia.
3. All jurisdictional matters requisite to bringing this matter on for final hearing has been met.
4. Parties waived presence of a Commissioner on each day of proceedings.
5. Complainant possessed a G.E.D., trade school experience, and experience as a prison guard in the military.
6. Complainant took the Civil Service Examination for Conservation Officer in February 1977 and received his score of 70.91 in March of that year.
7. The score of 70.91 was a passing score for the examination given.

8. The Complainant testified that he believed that he was hired by the Respondent as a result of certain conversations he had with Mr. Cavacini and Mr. Callaghan, employees of Respondent.
9. The Complainant in effect was never placed on Respondent's payroll as a Conservation Officer, although the Complainant represented himself as being an officer on numerous occasions since his testing.
10. The Complainant testified that he was informed he had to be within the top five tested; this was corroborated by the testimony of Jane Ann King, Director of Personnel, West Virginia Civil Service, whose responsibility it was to submit the eligible names from those persons passing the test to Respondent for hiring consideration.
11. Ms. King also testified that the Complainant did not fall within the proper time frame to receive "veteran Points" (points automatically added to the score of military veterans serving in military service within a specified time).
12. The evidence introduced in Complainant's case established that there was no data upon which to determine whether the Civil Service test given to Complainant was unduly biased impacting disparately on minority applicants.
13. The Complainant was not within the top two-thirds of those persons tested; nor was he during the time he was on the Civil Service listing, one of the next top five (5) eligibles capable of being certified to the Respondent as a potential candidate for Conservation Officer.
14. The Complainant's allegations of discrimination are wholly without merit.

CONCLUSIONS OF LAW

The Complainant has failed to make a prima facie showing of discrimination based on his race. The defendant, through its cross-examination of the Complainant and his witness, clearly established that the consideration in not hiring him had nothing to do with his race. See McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973).

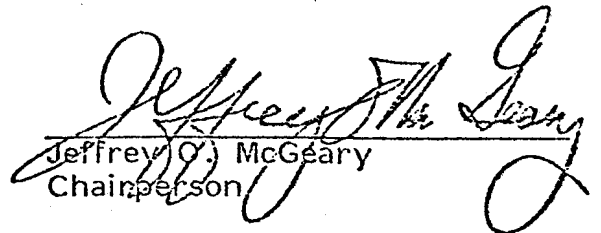
RELIEF

Judgment ORDERED for the Respondent against the Complainant.  
This case is ORDERED dismissed.

DATE:

FEB. 18, 1983

ENTER:

  
Jeffrey O. McGeary  
Chairperson