

file



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
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CHARLESTON, WEST VIRGINIA 25301**

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ARCH A. MOORE, JR.
Governor

March 10, 1986

Lawrence E. Wilkerson
P. O. Box 1825
Beckley, WV 23801

Eumi Choi, Esq.
Assistant Attorney General
1203 Kanawha Boulevard, E.
Charleston, WV 25301

S. Douglas Adkins, Esq.
P. O. Box 1679
Williamson, WV 25661

RE: Lawrence Edward Wilkerson V. City of Williamson Police
Department/ER-149-81

Dear Mr. Wilkerson; Mr. Choi & Mr. Adkins:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Lawrence Edward Wilkerson V City of Williamson Police Department/ER-249-81.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

Howard D. Kenney
Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

RECEIVED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JAN 16 1986

W.V. HUMAN RIGHTS COMM.

LAWRENCE EDWARD WILKERSON,

Complainant,

vs.

Docket No. ER-249-81

CITY OF WILLIAMSON POLICE DEPARTMENT,

Respondent.

ORDER

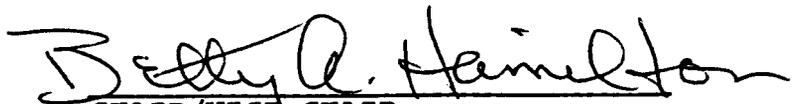
On the 8th day of January, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner, Marjorie Martorella. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law attached hereto and made a part of this Order.

By this Order, a copy of which shall be sent by certified mail to the parties, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 4 day of Feb., 1986.

Respectfully Submitted



~~CHAIR/VICE-CHAIR~~
West Virginia Human
Rights Commission

RECEIVED

DEC 10 1985

W.V. HUMAN RIGHTS COMM.

WEST VIRGINIA SUPREME COURT OF APPEALS ~~FOR THE~~
WEST VIRGINIA HUMAN RIGHTS COMMISSION

LAWRENCE EDWARD WILKERSON,

Complainant

vs.

DOCKET NO. ER-249-81
ER 248-81

CITY OF WILLIAMSON
POLICE DEPARTMENT,

Respondent.

FINAL DECISION

This matter was heard on October 18, 1985 pursuant to a notice dated July 26, 1985. The complainant, Lawrence Wilkerson appeared in person and by his counsel, Eumi Choi, Assistant Attorney General, and the respondent, City of Williamson Police Department, by its counsel, S. Douglas Adkins. The complainant testified on behalf of himself and Paul Wilson, investigator, was called as a witness in his behalf. The following persons appeared and testified on behalf of the respondent: Sam Kapouralas, Millard Jewell, James Pack, David Tincher.

Subsequent to the hearing of this case, the respondent filed a motion to exclude complainant's post hearing briefs, which motion was dated November 22, 1985. Upon full consideration, respondent's motion is hereby denied.

The issue presented by the complaint is whether the race

of the charging party was the basis for respondent's refusal to hire him.

The parties stipulated to the following facts:

1. That the City of Williamson is an employer within the meaning of the Human Rights Act.
2. That the Human Rights Commission has jurisdiction over the subject matter in this case.
3. That the complainant, Lawrence Wilkerson, is black.
4. That Mr. Wilkerson took the civil service examination in connection with his application for employment as a police officer with the City of Williamson on June 2, 1980, and that he was ultimately not hired.
5. That Mr. Wilkerson passed the civil service examination which he took on June 2, 1980.

FINDINGS OF FACT

Upon full consideration of all the evidence, the Hearing Examiner finds as follows:

1. That complainant, Lawrence Wilkerson, belongs to a protected class in that he is black.
2. That Lawrence Wilkerson applied for employment with the City of Williamson Police Department, passed the civil service test, and that he was eligible for the job for which he applied.
3. That four white males were hired after Lawrence

Wilkerson took the civil service test.

4. In December of 1979, the complainant, Lawrence Wilkerson, was involved in an altercation outside the Continental Lounge in the city of Williamson. When police officers for the City of Williamson attempted to arrest the complainant, he ran, swung at and hit a police officer for the City of Williamson, escaped in an automobile driven by another and was subsequently pursued and arrested.

5. Mr. Wilkerson was not convicted of the charges arising from the incident; the charges were dismissed because the complainant said that he intended to return to military service and that a conviction would prevent his doing so.

6. The altercation and attempted arrest took place in view of thirty to forty people.

7. The complainant was not hired as a police officer primarily because of his conduct as described in paragraph 4.

CONCLUSIONS OF LAW

1. By virtue of the findings of fact contained in paragraphs 1 through 3 above, the Hearing Examiner finds that Lawrence Wilkerson has established a prima facie case of discrimination;

2. The Hearing Examiner further finds, pursuant to the employer's evidence and findings of fact contained in

paragraphs 4 through 6 above, that the City of Williamson Police Department has met its burden in establishing an legitimate, nondiscriminatory reason for the refusal to hire.

3. The Hearing Examiner further finds nothing in the record that would serve to rebut the employer's testimony as a nondiscriminatory reason for its refusal to hire.

4. Conflicting evidence was introduced as to whether the fact that Mr. Wilkerson, while married, lived with or had a relationship with a white woman influenced the refusal to hire; however, the record does not establish by a preponderance of the evidence that this fact influenced the refusal to hire.

5. The complainant's 1984 arrest and conviction for third degree sexual assault is not relevant to his application as a police officer in 1980, or to the employer's refusal to hire.

6. Complainant was not refused employment because of his race in violation of statute, but rather was refused employment for legitimate, nondiscriminatory reasons established by a clear preponderance of evidence by the employer.

Therefore, the Hearing Examiner recommends to the Human Rights Commission that it find in favor of the respondent, that this case be closed, and that each party shall pay its

own costs and attorneys' fees.

ENTER

Date: December 3, 1985



Hearing Examiner

CERTIFICATE OF SERVICE

I, PAUL R. STONE, hereby certify that I have this 6th day of December, 1985, mailed a true copy of the Final Decision named in the foregoing letter by depositing said Decision in the United States Mail in properly addressed envelopes to the following persons:

✓ Lawrence E. Wilkerson
P. O. Box 1836
Beckley, West Virginia 25801

✓ Eumi Choi, Esquire
Assistant Attorney General
1204 Kanawha Boulevard, E.
Charleston, West Virginia 25301

City of Williamson Police Dept.
3rd Avenue & Harve Street
Williamson, WV 25661

✓ S. Douglas Adkins, Esquire
P. O. Box 1679
Williamson, West Virginia 25661

Paul R. Stone