

THE EYES HAVE IT.....RIGHT???

THE CASE OF THE BIG TEN CONFERENCE FOOTBALL REFEREE WHO ONLY HAD ONE EYE!

Raphael O. Boyd
Clark Atlanta University

Mark Watson was an official for Big Ten football from 1992 until 2004. Watson lost his right eye, however, in 2000 due to an unfortunate accident. After informing the appropriate persons of his condition, he was eventually allowed to continue to referee games. He performed this function until the fact that he had only one eye became known. Once this disclosure was known, Watson was fired. He, accordingly, sued the Big Ten Conference. Quite predictably, this case gained national exposure from the media. Although efforts have been made to ensure the accuracy of the facts, the individual names of the persons have been changed. This case is appropriate for a graduate Business Law class, an Employment Law class, or an undergraduate Business Law I class.

THE BACKGROUND OF THE BIG TEN CONFERENCE

The Big Ten Conference is “the United States’ oldest Division I college athletic conference.” Notwithstanding the name, the Big Ten Conference contains eleven (11) member institutions. The number eleven (11) is actually located within the Big Ten Logo.

These institutions are noted to be located primarily in the Midwestern section of the United States. These institutions are:

- University of Illinois
- Indiana University
- University of Iowa
- University of Michigan
- Michigan State University
- University of Minnesota
- Northwestern University
- Ohio State University
- Pennsylvania State University
- Purdue University
- University of Wisconsin

With the exception of Northwestern University as the only private institution member, the other member institutions are considered public institutions. The student enrollments of these institutions range from approximately 13,400 to 52,500 students.

The Big Ten Conference has the distinction of being the “only Division I conference to have all of its member institutions affiliated with the Association of American Universities, a prestigious collection of sixty (60) research institutions, and leads all conferences in the total amount of research expenditures.”

The Big Ten Football Conference enjoys an excellent reputation. It competes in the “Football Bowl Subdivision (FBS; formerly known as Division I-A).” This is generally regarded by some sources as the “highest level of NCAA competition in this sport.”

Member institution football programs within the Big Ten Conference have competed for national championships. The conference is considered an excellent conference.

THE CASE

Mark Watson had spent a great deal of his adult life as a football official. In order to achieve this level of excellence, he, presumably, made all the necessary sacrifices and performed all the tasks required to fulfill this esteemed endeavor and become successful. This was a dream that he was able to actively pursue and enjoy.

In 1992, Watson’s efforts achieved a quality level of success, and he obtained a position officiating in the Big Ten Conference. As a result, he became a “familiar figure on football fields such as the University of Michigan in Ann Arbor, Michigan; Ohio State University in Columbus, Ohio; and University of Wisconsin in Madison, Wisconsin, among other Universities and cities with Big Ten conference teams.” Refereeing at such a level, he was noted by some for his attire and professionalism. He donned glasses and was notably described as “lean in his striped shirt, with a touch of gray under his striped cap.”

He performed these duties from 1992 until 2004. Officiating in the Big Ten Football Conference was recognized by some as a prestigious position in one of the most respected football conferences in the country. Watson appreciated this achievement and took his job very seriously. During his officiating time period, he “always met and often exceeded” the expectations of the Big Ten Conference. It is not a stretch to state that Watson thoroughly enjoyed his job. His position refereeing football games in the Big Ten Conference, however, was put in jeopardy.

THE ACCIDENTAL INJURY

In May of 2000, Watson suffered a serious blow. He had a misstep which turned out to be quite unfortunate and disastrous. Owing to this unfortunate circumstance, he fell and hit his eye on the corner of a table. He was immediately rushed to a physician. He learned that he had lost total sight in his right eye. After some deliberation and thought, Watson decided to have a prosthetic put into the place of his injured eye.

Watson then contacted his immediate supervisor Dan Brown. Brown was the Big Ten's Coordinator of Football Officials. Watson informed Brown of the accident and the resulting physical condition. Brown responded by telling Watson that "he expected him to work hard at recovery and be able to return for the upcoming football season." With that feedback, Brown began to seek the path of recovery and possible return to being a Big Ten Referee.

Watson had the surgery and the prosthetic eye was implanted. After the surgery, Watson wanted to seek further assurance that he could actually return to officiating. Watson spoke with his doctors and surgeons about his ability to continue his craft. As a result of these discussions and the medical input from physicians, Watson sought to return to his official duties as a referee in the Big Ten Football Conference in the Fall of 2000 with Brown's approval.

Watson did not just return, however, to the Big Ten Football Conference. He sought rehabilitation to achieve a level of physical readiness and dedicated himself to getting back into shape. He spent the Spring and Summer of 2000 "testing himself at semi-professional football and high school basketball games." Presumably, these efforts were undertaken to ensure a high level of fitness, health, and confidence to officiate in the Big Ten. Although it is easy to assume that the mental and physical challenges were great, Watson felt that he had succeeded in his endeavor to once again officiate at the college level.

RETURNING TO DUTY

Once Watson had performed the necessary work to begin refereeing games, he proceeded to go back to his passion of refereeing college football games. The challenge was not easy and required great effort; however, he felt ready to continue. Upon returning to his refereeing duties, Watson proceeded to provide notice to his supervisors. He was very open and honest about his condition in order to presumably ensure they had all the information necessary. He spoke openly about it to a number of people. In fact, Watson performed his job as a referee for the next five (5) seasons. This officiating performance was accomplished at an excellent level.

In fact, by some measures, it was considered “as good or better than ever.”

The standards to assess the performance of officials are quite noteworthy. Officials are evaluated after each game. Most notably, it is done by coaches and other officials. Ironically, Watson’s performance was quite effective. In fact, Watson’s performance during those five years after the eye injury was on average, “substantially better than his reviews in the eight years preceding the loss of his eye.” As if this type of performance were not enough, Watson was selected to officiate two bowl games during those five years. One of the two games was the Orange Bowl game between Miami and Florida State. This is an honor only bestowed upon those officials in the Big Ten that performed at the highest ratings.

Watson’s performance was also noted by others. Reginald Horace, an official who worked with Watson in the Orange Bowl and officiated a number of games over the years with Watson, spoke candidly about Watson’s officiating performance. Horace stated that he “couldn’t tell any difference in his officiating from before he lost his eye and after.” Horace also stated that Watson “had the same attitude, the same hustle, the same work ethic, and the game skills that he always had before he lost his eye.” Horace felt that Watson’s performance had not changed.

There was some interest in why Watson’s officiating performance had improved after he lost his eye. Although there were several theories which were tossed about, one seemed to prevail. Since Watson was “sensitive to his potential limitations, he concentrated extra hard on making the right calls after his injury.” It was noted, however, that if “extra concentration could improve his rating, what does that say about his pre-injury level of effort?” Although these theories are intriguing, they could not stop the changes to come for Watson’s officiating career.

THE PHONE CALL

In the Spring of 2005, a reporter contacted Tom Jenkins, the head football coach at the University of Michigan, concerning Watson’s physical condition. After learning about Watson’s condition, Jenkins then contacted the Big Ten Conference Commissioner Bill Humphrey. Humphrey then contacted Brown, Watson’s supervisor, with instructions to terminate Watson. Ironically, the decision to terminate Watson was made without “first asking Watson about his condition or subjecting him to vision or performance assessments.” Brown contacted Watson, and on May 3, 2005, Watson’s employment in the Big Ten Conference as an official was terminated.

Humphrey met with Watson after the firing for a brief period of time. After inquiring about the termination, Humphrey openly acknowledged that Watson was “terminated

because he did not have two eyes.” Humphrey also stated that without two eyes, he failed to “fulfill the minimum physical requirements of the job, and he “did not have a full field of vision.” Humphrey stated that although he was not a physician, “it certainly is easy to imagine how a person blinded in one eye might have diminished perception.” He further noted that “one might worry that the official would miss a crucial call, or perhaps be injured because he failed to spot a mass of college athletes coming his way.”

Predictably, there was also a substantial concern from the Big Ten Conference over the media’s learning about Watson’s physical condition. The Big Ten Commissioner stated that he was not a physician; however, it would be “easy to imagine how a person blinded in one eye might have diminished perception.” In fact, he further stated that “one might worry that the official would miss a crucial call, or perhaps be injured because he failed to spot a mass of college athletes coming his way.”

In addition, it was noted that this situation could be an embarrassment to the conference. In one instance, it was noted that there would be a major backlash if the public found out about the situation.

A representative of *Sports Illustrated* actively “cheered” for Watson to return to work officiating. Based on what he had learned of Watson’s plight, he truly pulled for Watson.

Jenkins, the University of Michigan Football coach, was concerned over how he was being portrayed as a result of his role in this situation. Jenkins stated that he felt he had a duty as a member of the conference to contact the commissioner concerning Watson’s physical condition. Jenkins stated that he did not have any opinion about the situation. He was not calling with any motivation except to pass on information. What was done with the information was up to them. Jenkins further stated that “given the same circumstances, I would make the same call--in spite of the fact that it has been portrayed I cost him his job or that I was trying to get him fired. There is nothing further from the truth.” Emphatically, Jenkins disputed the notion that he cost Watson his job.

It should also be fairly noted that one of the Big Ten Conference’s lawyers, Steve Silverman, stated that another important fact was obscured. He observed that Watson, was “offered other officiating positions with the conference, which he declined.”

DECISION TO SUE

Interestingly enough, this factual situation concerning individuals participating in

major league football is not unique. In fact, Watson is not the first referee with only one eye to officiate at a high-level sports contest.

Fred Brower, a football and basketball referee, who called games at a Division I and NAIA conference, lost his eye in a golf-cart accident. Since that incident, however, he has returned to officiating. Brower stated that his “body had made the adjustment and his vision now seems normal.”

Another person, Eric Barbour, lost his right eye at the age of 29. He was an umpire for an independent league in the Midwest. Barbour was respected for his good judgment and his extra-effort hustle. Now in his late 50s, Barbour is the general manager of the Toledo Storm in a summer collegiate league. The commissioner for that league had a specific set of criteria for a good umpire. He stated that an umpire should be a good person, be in the proper position when the call is made, and should work hard. The commissioner stated that Barbour met those requirements.

After all that had occurred over the resulting conflict, Watson was quite understandably distraught. He had performed his job with a high rating for years after he returned to duty. He had not sought any unreasonable accommodations from the league. In fact, he had been rewarded for his efforts. He had felt that he had disclosed the facts of his condition to the appropriate places and was open about his condition. He knew that the league was concerned about his condition being known to the public. He felt, however, that this should not matter and he should be allowed to continue.

After contemplating on his accomplishments and efforts, Watson became disenchanted. He felt he was treated unfairly. He spoke with legal counsel to determine his options.

Watson, the 53-year-old resident of suburban Chicago, filed suit at a time later after the termination under Title I and Title III of the Americans with Disabilities Act. He sought “back pay and reinstatement.” Further, he sought compensatory and punitive damages. The damages would be in addition to other damages and fees.

DISCUSSION QUESTIONS

LEGAL DECISIONS

1. Discuss the legal argument and corresponding appropriate facts supporting a legal claim under Title I of the Americans with Disabilities Act (ADA).

- Discuss the possible defense(s) against a Title I of the ADA and support the defenses with the appropriate facts.
2. Discuss the legal argument and corresponding appropriate facts supporting a legal claim under Title III of the Americans with Disabilities Act (ADA). Discuss the possible defense(s) against Title III of the ADA and support the defenses with the appropriate facts.
 3. What other issues could present legal liability concerns for the Big Ten Conference?

OTHER POSSIBLE OPTIONS

4. If you were the Commissioner of the Big Ten Conference, how would you have handled this situation?
5. How do you think the court of public opinion will view this case and how will it affect the prestige of the Big Ten Conference Football. Please state why and support your positions.

EXHIBIT 1

Big Ten Conference:

- United States' oldest Division I college athletic conference.
- The first discussion to regulate and control intercollegiate athletics about the Big Ten Conference took place on January 11, 1895.
- Eleven member institutions located primarily in the Midwestern United States.
- Conference enjoys prestige of both high athletic achievement and academic excellence.
- The Big Ten is the only division I conference to have all its member institutions affiliated with the Association of American Universities, a prestigious collection of 60 research institutions, and leads all conferences in the total amount of research expenditures.

Source: Big Ten Conference, http://en.wikipedia.org/wiki/Big_Ten_Conference

EXHIBIT 2

Americans with Disabilities Act (Title I & III), Reasonable Accommodations, Disability, Undue Hardships.

Americans with Disabilities Act (ADA)

Title I of the ADA "protects qualified individuals with disabilities from discrimination in

their employment.” “It is devoted to eliminating employment discrimination based on actual or perceived disabilities.”

The ADA is “designed to eliminate discriminatory employment practices that prevent otherwise qualified workers with disabilities from fully participating in the national labor force.” “The ADA extends Federal protection against disability-based discrimination to all workplaces with fifteen (15) or more workers.” (“State government employers are generally immune under the Eleventh Amendment from the application of this law.”)

Reasonable Accommodations – “The ADA requires that employers ‘reasonably accommodate’ the needs of persons with disabilities unless to do so would cause the employer to suffer an ‘undue hardship.’ Reasonable accommodations modifications may include “installing ramps for a wheelchair, establishing flexible working hours, creating or modifying job assignments, and designing or improving training materials and procedures.” Normally, “employers should give primary consideration to employees’ preferences in deciding what accommodations should be made.” But, “if an applicant or employee fails to let the employer know how his or her disability can be accommodated, the employer may avoid liability for failing to hire or retain the individual on the ground that the individual has failed to meet the ‘otherwise qualified’ requirement.”

Disability – “The ADA broadly defines persons with disabilities as persons with physical or mental impairments that ‘substantially limit’ their everyday activities. More specifically, the ADA defines a disability as:

- 1) a physical or mental impairment that substantially limits one or more of the major life activities of such individuals
- 2) a record or such impairment, *or*
- 3) being regarded as having such an impairment.”

Undue Hardship – “Employers who do not accommodate the needs of persons with disabilities must demonstrate that the accommodations would cause undue hardship. Generally, the law offers no uniform standards for identifying what is an undue hardship other than the imposition of a ‘significant difficulty or expense’ on the employer.” This is usually determined by the courts on a case-by-case basis.

Title III of the ADA provides:

“No individual shall be discriminated against on the basis of disability in the full and enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”

Source(s): “West’s Legal Environment of Business,” By Frank B. Cross and Roger Leroy Miller, 6th Edition, pp. 516-518, West Publishers. *Filson v. The Big Ten Conference*, No. 06 C 3839, 2006 WL 3626707 (N.D. Ill. Dec. 11, 2006).

EXHIBIT 3

Americans with Disabilities Act (Hostile-Environment), Tortious Interference with Prospective Economic Advantage.

Americans with Disabilities Act (Hostile-Environment)

The ADA- Hostile Environment is not expressly noted under the ADA. However, there are those that view this type of legal action as possible. "To succeed, such a claim would likely have to be based on conduct that a reasonable person would find so offensive that it would change the conditions of the person's employment."

Tortious Interference with Prospective Economic Advantage

The elements are:

- 1) "plaintiff's reasonable expectation of entering into a valid business relationship
- 2) defendant's knowledge of this expectation
- 3) defendant's purposeful interference with plaintiff's legitimate expectation, *and*
- 4) damages"

Source(s) : "West's Legal Environment of Business," By Frank B. Cross and Roger Leroy Miller, 6th Edition, p. 520, West Publishers. *Filson v. The Big Ten Conference*, No. 06 C 3839, 2006 WL 3626707 (N.D. Ill. Dec. 11, 2006). *Steele v. Thiokol Corp.*, 241 F.3d 1248 (10th Cir. 2001).

REFERENCES

Filson v. The Big Ten Conference, No. 06 C 3839, 2006 WL 3626707 (N.D. Ill. Dec. 11, 2006).

Cross, Frank B. and Miller, Roger L., "*West's Legal Environment of Business*," 6th Edition, West Publishers, 2007, pp. 516-522.

Title I of the Americans with Disabilities Act.

Title II of the Americans with Disabilities Act.

Tortious Interference with Prospective Economic Advantage.

Rooney v. Koch Air, LLC, 410 F.3d 376, 380 (7th Cir.2005).

Karraker v. Rent-A-Center, Inc., 411 F.3d 831, 835 (7th Cir.2005).

Morgan v. Joint Admin. Bd., 268 F.3d 456, 459 (7th Cir.2001).

Olinger v. U.S. Golf Ass'n, 205 F.3d 1001, 1004 (7th Cir.2000), *rev'd on other grounds*, 532 U.S. 1064, 121 S.Ct. 2212, 150 L.Ed.2d 207 (2001); *see also Wisconsin Cmty. Servs. , Inc. v. City of Milwaukee*, 465 F.3d 737, 750 (7th Cir.2006).

Cody v. Harris, 409 F.3d 853, 859 (7th Cir.2005) (citing *Fellhauer v. City of Geneva*, 142 Ill.2d 495, 154 Ill.Dec. 649, 568 N.E.2d 870, 878 (1991)).

Beck v. University of Wisconsin Board of Regents, 75 F.3d 1130 (7th Cir. 1996); and *White v. Your International corp.*, 45 F.3d 357 (10th Cir. 1995).

White v. York International Corp., 45 F.3d 357 (10th Cir. 1995).

Web sites

[http://www.nytimes.com/2006/10/08sports/ncaafootball/08ref.html?_r=1&n=Top/Reference/Time
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http://sports-law.blogspot.com/2006_08_01_archive.html

http://en.wikipedia.org/wiki/Big_Ten_Conference

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