Issue: Group II Written Notice (failure to follow policy) and Termination (due to accumulation); Hearing Date: 04/29/11; Decision Issued: 05/05/11; Agency: DCE; AHO: Cecil H. Creasey, Jr., Esq.; Case No. 9552; Outcome: No Relief – Agency Upheld; **Administrative Review: EDR Ruling Request received 05/20/11; EDR Ruling No. 2011-2990 issued 06/20/11; Outcome: AHO's decision affirmed; Administrative Review: DHRM Ruling Request received 05/20/11; DHRM decline-to-review letter mailed 06/22/11.**

COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution

DIVISION OF HEARINGS

In the matter of: Case No. 9552

Hearing Officer Appointment: March 21, 2011
Hearing Date: April 29, 2011
Decision Issued: May 5, 2011

PROCEDURAL HISTORY AND ISSUES

The Grievant requested an administrative due process hearing to challenge termination of her employment effective January 19, 2011, pursuant to a written notice, dated January 19, 2011 (AE B[1]) by Management of Department of Correctional Education (the "Department" or "Agency"), as described in the Grievance Form A dated February 2, 2011. AE A.

The hearing officer was appointed on March 21, 2011. The hearing officer scheduled a pre-hearing telephone conference call at 9:00 a.m. on March 25, 2011. The Grievant's attorney, the Agency's attorney and the hearing officer participated in the pre-hearing conference call. During the call, the Grievant, by counsel, confirmed that she is challenging the issuance of the Group II Written Notice for the reasons provided in her Grievance Form A and confirmed that she is seeking the relief requested in her Grievance Form A, including reinstatement, with restoration of all salary and benefits and reasonable attorney's fees. Following the pre-hearing conference, the hearing officer issued a Scheduling Order entered on March 25, 2011, which is incorporated herein by this reference.

In this proceeding the agency bears the primary burden of proof and must show by a preponderance of the evidence that the discipline was warranted and appropriate under the circumstances. The Grievant bears the burden of proof concerning her affirmative claim of retaliation.

At the hearing, the Agency was represented by its attorney. The Grievant was represented by her Attorney. Both parties were given the opportunity to make opening and closing statements, to call witnesses and to cross-examine witnesses called by the other party. The hearing officer also received various documentary exhibits of the parties into evidence at the hearing, namely all exhibits in the Grievant's binder (1 through 15) and Agency Exhibits A-Q in the Agency's binder.

[1] References to the grievant's exhibits will be designated GE followed by the exhibit number. References to the agency's exhibits will be designated AE followed by the exhibit letter.

APPEARANCES

Representative for Agency
Grievant
Witnesses

FINDINGS OF FACT

1. Until her termination, the Grievant had been an employee of the Department since February 2007.

2. The Grievant worked as a cosmetology instructor, teaching at the time of her termination twelve (12) inmates in a class at a Department of Corrections ("DOC") women's prison facility (the "Facility") from about 8:00 a.m. – 11:30 a.m., Monday - Friday.

3. The Regional Principal (the "Supervisor") supervised the Grievant for the Department.

4. The Grievant's current (2010-2011) and immediately preceding (2008-2009) EWP provide in part:

23. Agency/Departmental Objectives	**24. Measures for Agency/ Departmental Objectives**
AA Safety	
Reads and follows all policies and procedures related to safety and security. Attends all safety/ security related meetings.	Constantly follows established policies and procedures in regards to safety and security. Corrects unsafe work practices in the office or classroom. Is held accountable for all aspects of safety and security in the classroom/ office environment. Notifies supervisor of any problems or concerns in a timely manner.

AE E & G.

5. On December 6, 2010, the Grievant allowed Inmate S to leave the cosmetology classroom at 10:50 a.m. and to return to the housing unit with Scissors #2 which the Grievant had signed out to Inmate S earlier in the morning at 9:45 a.m. Tapes; AE M.

6. The Grievant only realized that Inmate S had left with the scissors when she began to collect the tools from her class at 11:20 a.m.

7. A DOC employee, Officer G, was assigned until January 1, 2011, to assist the Grievant in her classroom. The Grievant told Officer G of the missing scissors and Officer G retrieved the scissors from Inmate S while the Grievant "locked down" the classroom until the scissors were retrieved.

8. The Grievant accounted for Scissors #2, signing them back in, at 11:40 a.m. after they were returned by Officer G to the classroom. AE M.

9. The final Written Notice issued by Management to the Grievant charged her with a Group II Offense as follows:

> You are being issued a group II for not following established procedures, DCE Policy 3-27 Career and Shop Safety, and DCE Policy 3-28 Adult Tool Control. You allowed an inmate to leave the cosmetology classroom and return to the housing unit with a scissors. By not following these policies you have failed to maintain a secure area that may have caused harm to yourself, other state employees, or others in your care.

10. The Grievant has an active Group II Written Notice. AE C. Accordingly, the Agency ended the Grievant's employment, effective January 19, 2011, for accumulation of two (2) Group II Offenses.

11. The Grievant challenges the termination asserting she followed all applicable procedures under DCE Policy 3-27 and 3-28 "to a T".

12. However, the hearing officer finds that the Grievant clearly violated DCE Policy 3-27 and 3-28. This finding is discussed in greater detail below.

13. The Department's actions concerning the issues grieved in this proceeding were warranted and appropriate under the circumstances.

14. The Department's actions concerning this grievance were reasonable and consistent with law and policy.

15. The testimony of the Agency witnesses was both credible and consistent on the material issues before the hearing officer. The demeanor of the Agency witnesses at the hearing was candid and forthright.

ADDITIONAL FINDINGS, APPLICABLE LAW, ANALYSIS AND DECISION

The General Assembly enacted the *Virginia Personnel Act, Va. Code* § 2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Va. Code § 2.2-3000(A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints . . . To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances. *Grievance Procedure Manual*, § 5.8.

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 (the "SOC"). AE P. The SOC provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The SOC serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

Pursuant to the SOC, the Grievant's failure to follow DCE Policy 3-27 and 3-28 on December 6, 2010 can clearly constitute a Group II offense, as asserted by the Department.

b. **Group II Offense:**

> Offenses in this category include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action. This level is appropriate for offenses that significantly impact business operations and/or constitute neglect of duty, insubordination, the abuse of state resources, violations of policies, procedures, or laws.
>
> • See attachment A for examples of Group II Offenses.
>
> . . . .
>
> • A second active Group II Notice normally should result in termination . . .

AE P.

Attachment A specifically gives failure to follow supervisor's instructions or comply with written policy as the first example of a Group II offense. AE P.

At the hearing, the Attorney objected that the Written Notice was defective because it only covered "established procedures" under DCE Policy 3-27 and DCE Policy 3-28 as opposed to "policy" under 3-27 and 3-28. During the hearing, the Grievant herself referred to Webster's dictionary concerning the meaning of "permission." Webster's Ninth New Collegiate Dictionary defines "policy" in part as: "**b.** management or procedure based primarily on material interest . . ." (Emphasis supplied). The Supervisor testified that he used "procedures" under the written notice to include "policies".

Adopting the extremely technical position of the Grievant is antithetical to the more nimble, less rule-intensive character of administrative proceedings under the Rules and the Grievance Procedure Manual. However, the hearing officer did take this factor into account for his mitigation analysis, discussed in more detail below.

DCE Policy 3-27 provides in part:

> **V. POLICY**: It is the policy of the Department of Correctional Education to provide career and technical education programs in a safe and secure environment, thus, protecting the safety of staff, inmates, and visitors at all times. Through instruction, demonstration, practice and example, safety is not only a priority in the operation of a career and technical education program, but it is also emphasized as a necessary set of skills that must be

> mastered as part of any Career and Technical Education program or occupational job readiness skills program.

AE N.

Clearly, the Grievant violated this provision by allowing Inmate S to walk away and remain unsupervised for almost an hour with scissors which could potentially be used as a weapon, thereby endangering the safety of staff, inmates and visitors.

Even assuming for argument's sake that the Grievant's technical position was accepted, the Grievant still violated numerous provisions of the two (2) policies.

Concerning Policy 3-27, the following "procedures" under heading "VI. PROCEDURES" are applicable:

> L. Shops are <u>orderly</u> and clean at all times. During work periods, debris and obstruction are removed as soon as possible. Spills are cleaned immediately. Shop cleanliness is everybody's responsibility.
>
> M. All safety/hazard signs and zones are observed . . .
>
> N. Students are never permitted to operate machines and/or equipment without the instructor's authorization. Instructors are expected to provide supervision of those students while they are using the machines and/or equipment . . .
>
> U. Appropriate disciplinary measures shall be invoked for those who fail to adhere to the foregoing safety rules and procedures. (See DHRM Policy 1.60 Standards of Conduct)

AE N (Emphasis supplied.)

For example, the Supervisor convincingly testified that the Grievant's classroom was not orderly where scissors were unaccounted for and left the work area. This is especially the case in the context of a prison.

Concerning Policy 3-28, the following "procedures" under heading "VI. PROCEDURES" are applicable:

VI. **PROCEDURES**:

A. The Senior Deputy Superintendent of Career and Technical Education shall develop, with CTE Central Office staff, a set of "Standard Tool Control Guidelines for Adult Career and Technical Education Programs," see attached, which shall be reviewed and approved by the DCE Superintendent . . .

F. Failure to adhere to the "Standard Tool Control Guidelines for Adult Career and Technical Education Programs," and/or local tool control procedures will result in a Correction Action Plan, which may affect the operation of the identified CTE program or a Written Notice, per Department of Human Resource Management's Standards of Conduct policy.

AE O.

The Standard Tool Control Guidelines for Adult Career and Technical Education Programs provide in part:

B. Management of CTE Program Area. Each CTE instructor shall ensure that instruction is provided in an environment that is safe and secure at all times, thus, reducing the potential for injuries and protecting the safety of its staff, students, and visitors to the program area.

C. Tool Control Training

1. Each adult CTE instruction shall receive Phase 1 training provided by the local DOC Training Department that includes training on key control and tool control. This training will be arranged by the institution.

2. The adult CTE instruction shall not have access to keys or begin programs until they have completed the Phase 1 training.

D. Maintaining an Inventory List

1. Each adult CTE instruction shall maintain an accurate inventory list that identifies all tools assigned to the CTE program.

2. The tool inventory list shall be kept in each tool cage and tool room identifying each tool by name, number and location.

3. The storage location of a tool cannot be changed from one location to another without updating the inventory list.

4. All surplus tools shall be removed from the program area as soon as possible. The CTE instructor will modify the inventory list accordingly . . .

F. <u>Management of /Adult Classroom Tool Room or Steel Tool Cage</u>

1. Each adult Career and Technical Education lab will maintain a lockable tool room or steel cage area to secure all tools assigned to the program.

2. The tool room or steel cage shall remain locked except when issuing and/or receiving tools.

3. The tool room or steel cage areas shall contain shadow boards with silhouettes to display the tools and equipment.

4. Only the adult DTE instructor may enter the tool room/steel cage area to issue and/or receive tools.

5. All tools assigned to an adult Career and Technical Education program shall be engraved with a number established by the DOC Tool Control Officer. This number must be reflected on the inventory list.

6. All tools assigned to an adult Career and Technical Education program shall be either locked in tool room or steel cage areas and shall be displayed and silhouetted on a shadow board. Only one tool or piece of equipment is to be displayed on an individual silhouette.

AE K.

For example, Webster's Ninth New Collegiate Dictionary defines "maintain," in part, as to keep in an existing state of validity. Clearly, the Grievant did not "maintain" an accurate inventory list when she allowed Inmate S to wander off with Scissors #2.

The Supervisor clarified that often DCE policies are written in general terms so as not to conflict with the prison facilities' IOPs. After all, the Supervisor explained, DOC runs the prisons. However, Section VI(F) incorporates by reference all of the Facility's IOPs into DCE Policy 3-28. Despite her protestations, the Grievant received intensive training concerning the IOPs regarding tool control and could access these written policies/procedures through DOC security. DOC does not permit the Department to make hard copies of these security protocols for obvious security reasons. The Supervisor credibly testified that the Facility's IOPs mandated that the scissors (constituting long-term tools) had to be under monitored supervision at all times. The Supervisor also credibly testified that the IOPs required that the scissors be accounted for before they leave the work area.

At first the Grievant testified she was familiar with the Facility's procedures although she later denied this. When asked whether she knew if the Facility's procedures allowed for Inmate S to walk off with the scissors, the Grievant said no, that was just common sense.

As previously stated, the Agency's burden is to show upon a preponderance of the evidence that the discipline was warranted and appropriate under the circumstances and essentially the Grievant contests this determination by the Department in his Issue One in the Form A.

The hearing officer decides for the offense specified in the Written Notice (i) the Grievant engaged in the behavior described in the Written Notice; (ii) the behavior constituted serious misconduct; (iii) the Department's discipline was consistent with law and policy and that there are no mitigating circumstances justifying a further reduction or removal of the disciplinary action.

DHRM has previously ruled that there is no requirement under an earlier version of DHRM Policy 1.60 that an agency even consider mitigating circumstances. DHRM Policy Ruling, Grievance No. 8636, September 19, 2007.

However, this DHRM ruling does not negatively impact the Grievant's position under the facts and circumstances of this proceeding because under Va. Code § 2.2-3005, this hearing officer is charged with the duty to "[r]eceive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by the Department of Employment Dispute Resolution". EDR's *Rules for Conducting Grievance Hearings* provide in part:

> The *Standards of Conduct* allows agencies to reduce the disciplinary action if there are "mitigating circumstances" such as "conditions that would compel a reduction in the disciplinary action to promote the interests of fairness and objectivity; or . . . an

> employee's long service, or otherwise satisfactory work performance." A hearing officer must give deference to the agency's consideration and assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness. *Rules* § VI(B) (alteration in original).

If the Department does not consider mitigating factors, the hearing officer should not show any deference to the Department in his mitigation analysis. In this proceeding the Department did consider mitigating factors in disciplining the Grievant, including her service to the Department over approximately 4 years.

The Grievant has an active Group II Written Notice (AE C). The normal sanction for two (2) Group II violations is termination.

Accordingly, because the Department assessed mitigating factors, the Rules only allow this hearing officer to mitigate the discipline further if this hearing officer upon consideration of the evidence finds that the Department's discipline exceeded the limits of reasonableness.

While the Grievant might not have specified all of the mitigating factors herein, the hearing officer considered many factors including those specifically referenced above and all of those listed below in his analysis:

1. the Grievant's service to the Agency almost 4 years;

2. the fact that the Grievant received an overall rating of "Contributor" on her Performance Evaluations for 2008/2009 (AE G), 2007/2008 (AE H) and 2006/2007 (AE I); and

3. the Grievant followed procedures and policy well once the scissors were found to be missing.

EDR has previously ruled that it will be an extraordinary case in which an employee's length of service and/or past work experience could adequately support a finding by a hearing officer that a disciplinary action exceeded the limits of reasonableness. EDR Ruling No. 2008-1903; EDR Ruling No. 2007-1518. The weight of an employee's length of service and past work performance will depend largely on the facts of each case, and will be influenced greatly by the extent, nature, and quality of the employee's service, and how it relates and compares to the seriousness of the conduct charged. The more serious the charges, the less significant length of service and otherwise satisfactory work performance become. *Id.*

Here the offense is very serious. Clearly, the mitigation decision by the Department was within the permissible zone of reasonableness.

The Grievant has alleged retaliation but has failed to carry her burden of proof in this regard. An agency may not retaliate against its employees. To establish retaliation, a grievant must show he or she (1) engaged in a protected activity; *See Va. Code § 2.2-3004(A)(v) and (vi)* (2) suffered a materially adverse action; *See EDR Ruling Nos. 2005-1064, 2006-1169* and *2006-1283* and (3) a causal link exists between the adverse action and the protected activity; in other words, management took an adverse action because the employee had engaged in the protected activity. If the agency presents a nonretaliatory business reason for the adverse action, retaliation is not established unless the grievant's evidence raises a sufficient question as to whether the agency's stated reason was a mere pretext or excuse for retaliation. Evidence establishing a causal connection and inferences drawn therefrom may be considered on the issue of whether the Agency's explanation was pretextual. *See, EDR Ruling No. 2007-1530, page 5* (Feb. 2, 2007) and *EDR Ruling No. 2007-1561* and 1587, page 5 (June 25, 2007). This is addressed in greater detail below.

To prevail on her claim of retaliation at hearing, the Grievant bears the burden of proving, by a preponderance of the evidence, that (1) she engaged in a protected activity; (2) she suffered a materially adverse action; and (3) a causual link exists between the materially adverse action and the protected activity; in other words, that Management took a materially adverse action because she engaged in the protected activity.

The Grievant substantially prevailed in her previous grievance against the Department. AE A; GE 15. On June 21, 2010, the Grievant was ordered to be reinstated to her former, or a substantially similar, position and was afforded other relief including back-pay, restoration of all benefits and reasonable attorney's fees. The Grievant returned to work on August 17, 2010, was awarded back pay in October 2010 and began working again with cosmetology students on November 15, 2010. The Grievant's participation in the state's grievance process constitutes a protected activity.

The Agency issued the Group II Written Notice to the Grievant on January 19, 2011. Accordingly, the Grievant suffered a materially adverse action, the Group II Written Notice and related termination from employment.

However, the hearing officer finds and decides that the Grievant has not borne her burden of proving by a preponderance of the evidence that a causal link exists between the protected activity and the Group II Written Notice and related termination from employment.

The cause of the Group II discipline was the Grievant's clear violations of Agency policy. The cause of the termination was the Grievant's accumulation of two (2) Group II Written Notices. As the Agency's attorney argued and as the Grievant admitted on cross-examination, the Supervisor could properly consult with Human Resources for guidance and Management ultimately decided on only one (1) Group II Written Notice for the subject violations of policy.

The task of managing the affairs and operations of state government, including supervising and managing the Commonwealth's employees, belongs to agency management

which has been charged by the legislature with that critical task. *See, e.g., Rules for Conducting Grievance Hearings*, § VI; *DeJarnette v. Corning*, 133 F.3d 293, 299 (4th Cir. 1988).

Pursuant to DHRM Policy 1.60, Standards of Conduct, and the SOC, management is given the specific power to take corrective action ranging from informal action such as counseling to formal disciplinary action to address employment problems such as unacceptable behavior. Accordingly, as long as representatives of agency management act in accordance with law and policy, they deserve latitude in managing the affairs and operations of state government and have a right to apply their professional judgment without being easily second-guessed by a hearing officer. In short, a hearing officer is not a "super-personnel officer" and must be careful not to succumb to the temptation to substitute his judgment for that of an agency's management concerning personnel matters absent some statutory, policy or other infraction by management. *Id.*

In this proceeding, the Department's actions were consistent with law and policy and, accordingly, the exercise of such professional judgment and expertise warrants appropriate deference from the hearing officer. *Id.*

DECISION

The Department has sustained its burden of proof in this proceeding and the action of the Department in issuing the Group II Written Notice and in terminating the employment of the Grievant because of her accumulation two (2) active Group II Written Notices is affirmed as warranted and appropriate under the circumstances. Accordingly, the Department's action concerning the Grievant is hereby upheld, having been shown by the Department, by a preponderance of the evidence, to be warranted by the facts and consistent with law and policy.

APPEAL RIGHTS

As the *Grievance Procedure Manual* sets forth in more detail, this hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

Administrative Review: This decision is subject to three types of administrative review, depending upon the nature of the alleged defect of the decision:

1. **A request to reconsider a decision or reopen a hearing** is made to the hearing officer. This request must state the basis for such request; generally, newly discovered evidence or evidence of incorrect legal conclusions is the basis for such a request.

2. **A challenge that the hearing decision is inconsistent with state or agency policy** is made to the Director of the Department of Human Resources Management. This request must cite to a particular mandate in state or agency policy. The Director's authority is limited to ordering the hearing officer to revise the decision to conform it to written policy. Requests should be sent to the Director of the Department of Human Resources Management, 101 N. 14th Street, 12th Floor, Richmond, Virginia 23219 or faxed to (804) 371-7401.

3. **A challenge that the hearing decision does not comply with grievance procedure** is made to the Director of EDR. This request must state the specific requirement of the grievance procedure with which the decision is not in compliance. The Director's authority is limited to ordering the hearing officer to revise the decision so that it complies with the grievance procedure. Requests should be sent to the EDR Director, Main Street Centre, 600 East Main Street, Suite 301, Richmond, Virginia 23219 or faxed to (804) 786-0111.

A party may make more than one type of request for review. All requests for review must be made in writing, and received by the administrative reviewer, within **15 calendar** days of the **date of original hearing decision**. (Note: the 15-day period, in which the appeal must occur, begins with the date of **issuance** of the decision, **not receipt** of the decision. However, the date the decision is rendered does not count as one of the 15 days; the day following the issuance of the decision is the first of the 15 days.) A copy of each appeal must be provided to the other party.

A hearing officer's original decision becomes a **final hearing decision**, with no further possibility of an administrative review, when:

1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or

2. All timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision.

Judicial Review of Final Hearing Decision: Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director before filing a notice of appeal.

ENTER:

____

John V. Robinson, Hearing Officer

cc: Each of the persons on the Attached Distribution List (by U.S. Mail and e-mail transmission where possible and as appropriate, pursuant to *Grievance Procedure Manual*, § 5.9).

June 22, 2011

[Grievant]

RE: **<u>Grievance of [Grievant] v. Department of Correctional Education</u>**
Case No. 9552

Dear [Grievant]:

The agency head of the Department of Human Resource Management, Ms. Sara Redding Wilson, has directed that I respond to your request for an administrative review of the hearing officer's decision in the above referenced case. Please note that, pursuant to the Grievance Procedure Manual, §7.2(a), either party to the grievance may request an administrative review within 15 calendar days from the date the decision was issued if any of the following apply:

1. If you have new evidence that could not have been discovered before the hearing, or if you believe the decision contains an incorrect legal conclusion, you may request the hearing officer either to reopen the hearing or to reconsider the decision.

2. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management (DHRM) to review the decision. You must refer to the specific policy and explain why you believe the decision is inconsistent with that policy.

3. If you believe that the hearing decision does not comply with the grievance procedure, you may request the Director of EDR to review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply.

In each instance where a request is made to this Agency for an administrative review, the party making the request must identify with which human resource policy, either state or agency, the hearing decision is inconsistent. In our opinion, while you identified two agency policies, we fail to see how the hearing decision is not in compliance with those policies. Rather, it appears that you are disagreeing with how the hearing officer assessed the evidence, the credibility he afforded the witnesses and the evidence, and with the resulting decision. We therefore must respectfully decline to honor your request to conduct the review.

Sincerely,

Ernest G. Spratley
Assistant Director,
Office of Equal Employment Services