

4.4 | SCENARIO 1: APPEAL FROM A FINAL AGENCY DECISION ON THE MERITS

The agency issued a final decision, finding no discrimination because the supervisor's testimony was more credible.

On appeal, the standard of review is de novo review, which means the Commission does not have to defer to the Agency's credibility determinations.

In your brief, you can argue in detail why your version is more credible than the supervisor's version. You may argue, for example, that the supervisor had made prior inconsistent statements; he was biased; the supervisor's version is contradicted by other coworkers who witnessed the conversation and your appearance and reaction after the forcible kissing; or the inherent improbability of the supervisor's version of events. See, e.g., *Complainant v. Department of the Army*, EEOC Appeal No. 0120111865 (July 9, 2014) (finding the supervisor's account, that he juxtaposed the phrase "my girl" with asking whether someone was watching "Forrest Gump" to be implausible.), at https://www.eeoc.gov/sites/default/files/migrated_files/decisions/0120111865.txt

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