

4.5 | SCENARIO 2: APPEAL FROM AN ADMINISTRATIVE JUDGE'S SUMMARY JUDGMENT DECISION

An EEOC administrative judge issued a summary judgment decision in favor of the Agency. The administrative judge found it appropriate to issue summary judgment because there was no genuine issue of material fact, even when all the evidence was considered in the light most favorable to the complainant. The administrative judge then determined that the complainant failed to prove she was subjected to sexual harassment.

On appeal, the standard of review is de novo review, which means the Commission does not have to defer to the administrative judge's factual findings or legal determinations.

In your brief, you cannot simply repeat the same arguments made in scenario 1. Rather, you should argue that the administrative judge made a mistake in granting summary judgment because this case can only be resolved by weighing conflicting evidence.

For example, you can argue that your testimony, and the testimony of other coworkers, establish that on May 4, your supervisor verbally harassed you by trying to claim possession over you when he declared you were "my girl." Moreover, he made unwelcome physical contact by forcibly kissing you. The supervisor testified that this conversation never took place on May 4, and instead refers to a different conversation with a different coworker on May 10. Moreover, he denied kissing you and instead gave a consensual friendly hug. The only way to resolve this conflicting evidence about what happened on May 4 is to hold a hearing. Therefore, you ask the Commission to reverse the administrative judge's summary judgment decision and remand the matter for a hearing.

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