

8. Since the charging party did not submit any statutory or case law indicating that the Department's determination was erroneous, his appeal cannot be successful based on Minnesota Rules, part 5000.0700, subp. 9 (c).
9. Thus, the Department will interpret the charging party's appeal to be a request to reweigh the evidence per Minnesota Rules, part 5000.0700, subp. 9 (b), and turn the discussion to the evidence that was available during the investigation. As noted in the Department's memorandum, the investigator contacted witnesses before making a finding in this case, including the charging party's witness (hereinafter W). In an interview conducted on March 19, 2009, W stated that he did not hear any words or exchanges between the store clerk and the charging party during the incident, and indicated that "I would've heard something, but didn't." W also stated that he was not able to recall the store clerk making any reference to the charging party's race. Lastly, W testified that he did not notice anyone blocking the entry and exit door while the charging party was in the store.
10. For these reasons, the Department did not find that the charging party's witness corroborated the charging party's claim. Thus, after having thoroughly examined the witness information gathered by the investigator, I conclude that relevant witnesses were contacted, appropriate questions were asked, and proper conclusions were drawn from the witnesses' statements.
11. In its review, the Department also viewed the DVR proffered by the charging party. The video entitled "Checkout" clearly shows the charging party and a respondent employee exchanging words; however, the video did not capture audio data. Therefore, the Department is unable to discern whether the dialogue between the parties was discriminatory against the charging party. Without audio data or other evidence, the Department is unable to infer a discriminatory motive based on race. The evidence reviewed did not substantiate the charging party's allegations of discrimination.
12. The charging party asserts that the alleged discriminatory act occurred *after* he made a purchase from the respondent store and restates that he was not prohibited from making a purchase. Nevertheless, the analysis for a claim governed by Minn. Stat. §363A.11 subd. 1 is the same. The Minnesota Supreme Court has determined that the elements of a disparate-treatment claim in public accommodations include: (1) the charging party is a member of a protected class; (2) the respondent discriminated against the charging party regarding the availability of its goods or services; and (3) the discrimination was because of the charging party's membership in the protected class.
13. The charging party also claims that he was discriminated against because of both his race *and* gender identities. In other words, his particular status as an African-American male was the basis of his discrimination. Moreover, the charging party argues that to analyze these identity categories separately is inadequate because they do not fully articulate his experience, which was different than men of other races and of African-American women at the respondent store during the time of the alleged incident. Although the Department acknowledges the attempted distinction asserted by charging party, alas, such a multifaceted analysis is not recognizable within the legal meaning of the MHRA.