

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

DAVID B. EVANS, SR.,	:	
CHADWICK DeMARCO, and	:	
MARIE N. VERTULE,	:	
	:	
Employees,	:	Case Nos. CS-2008-220
	:	CS-2008-225
v.	:	CS-2008-228
	:	
DEPARTMENT OF JUVENILE	:	<u>FINAL ORDER</u>
JUSTICE,	:	
	:	Order Number: 08CS-290
Agency.	:	Date Issued: November 3, 2008
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David B. Evans, Sr., and Chadwick DeMarco, St. Augustine, and Marie N. Vertule,
Palm Coast, employees representing themselves.

William Nelson, Orlando, attorney representing agency.

On August 20, 2008, the Department of Juvenile Justice (Agency) dismissed David Evans, Sr., and Chadwick DeMarco. On September 2, 2008, the Agency dismissed Marie Vertule. The Employees appealed to the Commission and a telephone hearing was held between St. Augustine and Tallahassee before an appointed hearing officer on October 10. The hearing officer issued his recommended order on October 20, concluding that the Agency had cause to discipline the Employees and that the law does not provide for mitigation. Neither party excepted to the hearing officer's order. A transcript of the hearing has not been filed with the Commission.

We accept the hearing officer's findings of fact. We note that conclusion of law three states "The Agency should be ordered to change its personnel records to show that the sole basis for dismissal is a violation of the Internet use policy." The

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Commission's jurisdiction in resolving career service cases is set forth in Section 110.227 (6)(c), Florida Statutes (2008), which states:

If the commission finds that cause did not exist for the agency action, the commission shall reverse the decision of the agency head and the employee shall be reinstated with or without back pay. If the commission finds that cause existed for the agency action, the commission shall affirm the decision of the agency head. The commission may not reduce the penalty imposed by the agency head, except in the case of law enforcement or correctional officers, firefighters, and professional health care providers, if the commission makes specific written findings of mitigation.

This provision does not authorize the Commission to order the relief recommended by the hearing officer. See also Lee v. Department of Health and Rehabilitative Services, 6 FCSR ¶ 117 (1991) (ruling that the Commission does not have statutory authority to seal or purge public records). However, our decision herein does not preclude the Agency from amending the Employees' personnel records to show that the sole basis for their dismissals is a violation of the Agency's Internet use policy. We agree with the hearing officer's analysis of the dispositive legal issues, his conclusions of law, except as noted above, and his recommendations. Accordingly, the hearing officer's recommended order is incorporated herein and the Employees' appeals are DISMISSED. § 120.57(1)(l), Fla. Stat. (2008).

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This order may be appealed to the appropriate district court of appeal. A notice of appeal must be received by the Commission and the district court of appeal within **thirty** days from the date of this order. Except in cases of indigency, the court will require a filing fee and the Commission will require payment for preparing the record on appeal. Further explanation of the right to appeal is provided in Sections 120.68 and 447.504, Florida Statutes (2008), and the Florida Rules of Appellate Procedure.

It is so ordered.

RAY, Chair, KOSSUTH, JR., and VARN, Commissioners, concur.

I HEREBY CERTIFY that this document was filed and a copy served on each party on November 3, 2008.

BY: *Vann Edmund*
Clerk

/bjk

