

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF VETERANS AFFAIRS

<p>Monty R. Sinner, Petitioner, vs. East Central School District (ISD) #2580, Respondent.</p>	<p>ORDER ON MOTION IN LIMINE</p>
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On September 18, 2006, the Petitioner filed Petitioner's Motion in Limine seeking to exclude any hearsay statements made by Ms. Brink to other witnesses whose testimony may be elicited at the hearing by the School District. On September 20, 2006, the School District filed a response to that motion. The Petitioner's Motion in Limine is therefore now before the undersigned Administrative Law Judge.

Margaret A. Skelton, Ratwik, Roszak & Maloney, P.A., 300 U.S. Trust Building, 730 Second Ave South, Minneapolis, MN 55402, represents the Respondent, (Respondent). Tammy P. Friederichs, Friederichs & Thompson, P.A., 1120 East 80th Street Suite 106, Bloomington, MN 55420, represents Monty R. Sinner (Petitioner).

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompany Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED, that the Petitioner's Motion in Limine is DENIED, without prejudice to the Petitioner's right to reassert the objections set forth therein as objections to testimony presented by the School District at the hearing.

Dated: September 21, 2006

/s/ Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge

MEMORANDUM

On September 18, 2006, the Petitioner filed a motion *in limine* to exclude testimony at the hearing regarding: (1) statements allegedly made by Mr. Sinner to Ms. Brink and then relayed to others by Ms. Brink; and (2) conclusions drawn by Ms. Brink and then stated by her to others. As grounds supporting the motion, the Petitioner argues that such testimony is excludable under Minn. R. Evid. 803 and 804. The Petitioner further argues that even if that evidence is admissible under those rules, it should nevertheless be excluded under Minn. R. Evid. 403 because “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury.” In response, the School District argues that the evidence that the Petitioner seeks to exclude is admissible under the more relaxed standards of admissibility that govern contested case proceedings. The School District also argues that the admissibility of evidence in question is more properly addressed in rulings on objections raised in the hearing rather than in an anticipatory motion *in limine*.

I. Admissibility of Evidence in Administrative Contested Case Hearings.

In effect, the Petitioner argues for strict application of the standards for admitting evidence in the Minnesota Rules of Evidence. On the other hand, the School District argues that the standard for admitting expert opinion evidence in administrative hearings is much more relaxed than the relatively rigid standards under the rules of evidence, relying on the following language in Minn. R. 1400.7300, subp. 1:

The judge may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The judge shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.¹

In the ALJ’s view, neither party’s view on the evidentiary standards that apply to the admission of expert opinion evidence in this case is entirely correct. On the one hand, the Minnesota Rules of Evidence do not actually govern administrative contested case hearings. On the other hand, the standards for admitting expert opinion evidence in administrative contested case proceedings may not be quite as relaxed as the School District suggests. For example, Minn. R. 1400.7300, subp. 1, provides that “[e]vidence which is incompetent, irrelevant,

¹ The rule reflects Minn. Stat. § 14.60, subd. 1, which provides:

In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial and repetitious evidence.

immaterial, or unduly repetitious *shall be excluded* evidence.” [Emphasis supplied.] In order to determine whether evidence is “incompetent, irrelevant, or immaterial” an administrative law judge must necessarily look to some external legal authority, such as the Minnesota Rules of Evidence or court decisions, to determine what is “incompetent, irrelevant, or immaterial” evidence and what is not. In other words, although the admission of expert opinion evidence in this proceeding may not expressly be governed by pertinent provisions of the Minnesota Rules of Evidence and appellate court decisions construing them, it is appropriate for the ALJ to at least seek guidance from those rules and decisions.

Minn. R. 1400.7300, subp. 1, creates a somewhat more specific standard where it addresses hearsay. It provides that an ALJ may admit hearsay evidence “if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs.” In this regard, the rule’s treatment of hearsay is in accord with the more general statutory standard for admissibility in contested case proceedings that the Legislature enacted in Minn. Stat. § 14.60, subd. 1:

In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs.

What is clear in both the rule and the statute is that an ALJ’s decision about whether a particular hearsay statement is probative and reliable often involves assessment of other evidence that may shed light on the statement’s reliability or unreliability. Put another way, whether the evidence being offered is “the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs” is essentially a question of fact that must be resolved by the ALJ. This task is best done in a hearing where both the proponent and the objecting parties are accorded opportunities to present and rely on other evidence in the hearing record that on the reliability of the hearsay statements in question.

For the reasons stated above, the ALJ denies the Petitioner’s Motion in Limine, without prejudice to the Petitioner’s right to reassert the objections set forth therein as objections to testimony presented by the School District at the hearing.

B.H.J.