

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION**

**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

**Plaintiff,**

**v.**

**RENT-A-CENTER EAST, INC.,**

**Defendant.**

**Case No. 16-cv-2222**

**Magistrate Judge Long**

**EEOC'S OBJECTION TO IDES DOCUMENTS**

The EEOC objects to the use at trial of the Illinois Department of Employment Security (IDES) documents that appear at ECF No. 99-1. The EEOC objects to two documents contained in the submission: (a) the "Printable Adjudication Summary" that appears at pages 5-10 (ECF document pagination) of ECF No. 99-1, and (b) the "Misconduct Questionnaire" that appears at page 11 of the same submission.

**Printable Adjudication Summary**

The Printable Adjudication Summary ("PAS") is not admissible.

The document is plainly hearsay. The interview notes at page 3 of the PAS (ECF page 7), which are the portion that RAC has stated it plans to refer to, are double or triple hearsay, as they are notes written by an unidentified IDES staff member purporting to summarize statements that Ms. Kerr made during a short telephone interview.

The business records exception, which RAC appears to be relying upon to overcome one of those levels of hearsay, does not apply. The accompanying declaration from an IDES official does not establish that the PAS is sufficiently reliable to fall within that exception. First, the very title of the document indicates that it is a "summary," and thus by its very nature it does not

even purport to be a complete statement of what Ms. Kerr stated during the interview it summarizes. The declaration does not indicate the name of the individual who conducted it or how long the interview lasted or whether the notes were contemporaneous. Based on the start time of the interview (10:47am) and the fact that the adjudicator's next call occurred 14 minutes later (at 11:01am), the interview apparently could have been as long as 14 minutes. The statements attributed to Ms. Kerr on page 3 of the Summary (ECF page 7) are plainly only a fraction of what would have been covered during a discussion of that duration. (By comparison, the recent final pretrial conference in this case lasted 144 minutes and generated a transcript of 144 pages; this suggests that an actual transcription of a 14 minute discussion would have been roughly 14 pages — or in any event significantly longer than what appears in the IDES interview summary.)

The declaration also does nothing more than describe IDES's general adjudication process — referring repeatedly to what “would have” occurred in such a proceeding — and does not explain anything about what protocols might be in place at IDES to monitor and ensure the accuracy of such interview notes. The burden is on RAC, as the proponent of this exhibit, to establish that the PAS is reliable, and the declaration does nothing more than report that the information in the PAS notes “would have come from Ms. Kerr and documented [sic] by the adjudicator at or near the time of the phone interview with Ms. Kerr.” ECF 99-1 at p. 4, ¶ 10.

The declaration's conclusory statement that the notes were created “at or near” the time of the interview leaves it unclear whether the notes were created while the adjudicator was speaking with Ms. Kerr, from memory later the same day or later in the week, or at some other time “near” the time of the interview. Given the volume of applications presumably handled by IDES, notes written down even a short time later could easily mis-record details that, while RAC wishes to assign them significance in this court proceeding, are relatively unimportant to the

IDES adjudicator's work.

The only overt assurance that the declaration gives for the PAS's reliability is that the declarant believes it is reliable "[b]ased on my experience with the IDES." Declaration ¶ 10. With due respect to the declarant, that statement provides no insight into why the declarant believes that the PAS is reliable. For example, the declaration gives no explanation of any quality control procedures in place at IDES to monitor the accuracy of such notes, what training or experience the adjudicator in question has, how frequently this adjudicator's determinations upheld on appeal, or any other objective basis for making a finding of reliability. The declaration merely establishes that the notes were created by a someone as part of an administrative proceeding — which is not in doubt but which does not establish reliability.

Even if the PAS is determined to be sufficiently reliable to be admitted under the business records exception, the interview notes set forth therein are one or two additional levels of hearsay for which no obvious exception applies. For example, the EEOC has certainly never adopted IDES's summary of the IDES interview.

The reliability of the PAS has not been sufficiently established.

Additionally, the PAS interview summary is itself quite misleading, as the adjudicator drafted it in the first person — as if Ms. Kerr herself had written it — when in fact the IDES declaration itself (¶ 10) makes clear that the information set forth there was written by the unidentified adjudicator, not by Ms. Kerr. Accordingly, showing the jury the interview summary would be objectionable under Fed. R. Evid. 403 to the extent that the document purports to be written by Ms. Kerr when in reality even IDES has acknowledged that it is not.

#### The Misconduct Questionnaire

The Misconduct Questionnaire (ECF page 11) involves one less layer of hearsay than the PAS interview notes, as the Questionnaire at least purports to be a document drafted by Ms. Kerr

herself. The EEOC's overall objection to the IDES records as not meeting the business records exception applies to the Questionnaire as well. Beyond that, whether the questionnaire is otherwise admissible depends on the use that RAC intends to put it to. It is worth noting that the Questionnaire authored by Ms. Kerr (unlike the PAS interview notes) is *consistent* with the account she has given in this case: she was fired after she used a company vehicle with her manager's permission. Therefore, the EEOC is uncertain what use RAC intends to put the Questionnaire to.

May 10, 2018

Respectfully Submitted,

s/ Justin Mulaire  
U.S. Equal Employment Opportunity Commission  
33 Whitehall St., Fl. 5  
New York, NY 10004  
212-336-3744

**CERTIFICATE OF SERVICE**

I hereby certify that on today's date, I caused the PLAINTIFF EEOC'S OBJECTION TO IDES DOCUMENTS to be served upon counsel to Defendant via the court's Electronic Case Filing system, pursuant to Local Rule 5.3(A).

May 10, 2018

Respectfully Submitted,

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