

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

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

Plaintiff,

v.

RENT-A-CENTER EAST, INC.,

Defendant.

No. 16-CV-2222

Magistrate Judge Eric I. Long

**DEFENDANT RENT-A-CENTER EAST, INC.'S TRIAL BRIEF
REGARDING THE ADMISSIBILITY OF IDES RECORDS**

The records obtained by Defendant Rent-A-Center East, Inc. (“RAC”) from the Illinois Department of Employment Security (“IDES”) are admissible because they are relevant and not hearsay. The statements of Megan Kerr (“Kerr”) within the records are not offered for the truth of the matter asserted, but rather to show how Kerr’s story concerning the central facts of this case has changed over time. To the extent they are hearsay, the records fall within the public records exception.

The records were filed with the Court on May 9, 2018, with the supporting declaration of Jody Wanless (“Wanless”), the Southern Region Assistant Regional Manager for IDES. *See* ECF # 99. The contested portion of the records comprise a five-page Printable Adjudication Summary (“PAS”) and a one-page Misconduct Questionnaire. *See* ECF # 99-1 at pp. 5-11.¹ The PAS and the Questionnaire concern Megan Kerr’s (“Kerr”) application for unemployment benefits from IDES following her termination from RAC. The records include the IDES’s

¹ There are two Misconduct Questionnaires filled out by Ms. Kerr contained in Defendant's Exhibit 42. Defendant intends to offer both questionnaires, which are the exact same form document, filled out by Ms. Kerr, on two different dates, with different answers to the questions. The Misconduct Questionnaires and the Printable Adjudication Summary are attached hereto as Exhibit 1.

summary of a telephone interview with Kerr performed in the standard course of the agency's investigation of unemployment claims.

A. The IDES Records Are Not Hearsay²²

The statements by Kerr that are contained in the IDES records likewise are not hearsay. RAC offers the statements not for the truth of the matter asserted – but rather for the falsity of the statements. Ms. Kerr testified in her deposition that she used the truck on a Sunday to fulfill a commitment made by a former manager (Russ Kasper) to a customer. Yet she told an entirely different story to the IDES, a story that Defendant has thoroughly discredited.

Ms. Kerr seemingly told the IDES investigator (in part):

We donated time to certain charities. In the past I had asked to use a vehicle. The Sunday before that Sunday, I used the (company) vehicle. On Monday he told me that I wasn't authorized to use the vehicle. I had been using it every other month and I had been there 10 years.

He was a newer manager. It was the company box truck. I was moving homeless people from the shelter into a home. The organization was at a church and we worked for GOODWILL too. This particular Manager doesn't spent time or anything to charitable events. I asked for permission before-hand. The Saturday previous, he gave me authorization then on Monday he let me go.

Printable Adjudication Summary at p. 3. (There are additional statements made by Ms. Kerr contained with in this summary which are not repeated here.) Similarly, the Misconduct Questionnaires – which were filled out by Ms. Kerr, signed by Ms. Kerr and submitted by Ms. Kerr) are similarly not being used to prove the truth of the statements contained therein:

Used a company vehicle on Sunday; With managers permission and given keys on a Saturday to assist with a charity event.

²² The Declaration clearly establishes foundation and authentication and as the EEOC does not contest either, Defendant will not belabor the point.

Reported to work on Monday. I was told I did not have permission and was let go.

Company vehicles are not Authorized for use during none (sic) business hours. (however exceptions have been made in past)

No negative circumstance arose because of my action. In fact my action brought Rent-Center in a more positive lite (sic) with the community.

August 4, 2014 Misconduct Questionnaire. Even more tellingly, Ms. Kerr changed her story in the next Misconduct Questionnaire that she submitted on March 15, 2016:

Worked at a volunteer event scheduled by store manager came back to work to be fired.

March 15, 2016 Misconduct Questionnaire.

The IDES records reveal that Kerr has changed her story several times concerning key events relating to her termination. RAC offers the records only to show that Kerr's story has changed – quite the opposite of offering the statements for their “truth.” Accordingly, the EEOC's hearsay objections concerning Kerr's own statements in the IDES records are inapplicable and invalid.

B. The IDES Records Fall Within the Public Records Exception

To the extent the EEOC objects on the basis that the recording of Kerr's statements by an IDES employee constitutes hearsay, the records fall within the public records exception to the hearsay rule. Federal Rule of Evidence 803(8) provides that a record or statement of a public office is not excluded as hearsay if “it sets out ... factual findings from a legally authorized investigation ... and the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.” FED. R. EVID. 803(8); *see Mathin v. Kerry*, 782 F.3d 804, 809 (7th Cir. 2015) (holding that investigative report by the Department of State

concerning the plaintiff's citizenship status, including summaries of interviews, fell within the public records exception).

The EEOC does not contest that the PAS and the Questionnaires are public records. Accordingly, by Rule 803(8)'s express terms, the EEOC bears the burden to demonstrate that the report is untrustworthy. The EEOC has failed to present any evidence challenging the trustworthiness of the report. Further, their legal arguments that the IDES report is untrustworthy are speculative and unavailing. The EEOC argues that the PAS potentially contains only a portion of what Kerr said to the investigator, and that Wanless's declaration is insufficient because she was not personally involved in the interview – theories that have been rejected by the Seventh Circuit. *Mathin*, 782 F. 3d. at 809 (explaining that “a report will not be excluded merely because the author did not have firsthand knowledge of the reported matters” and rejecting plaintiff's “argument that the report was inadmissible because the investigation could have been more thorough”) (citing *Jordan v. Binns*, 712 F.3d 1123, 1133 (7th Cir. 2013)). Moreover, the EEOC's speculative arguments seek to place the burden on RAC and the IDES to show the records are trustworthy, and thereby ignore the EEOC's own burden to affirmatively prove untrustworthiness under Rule 803(8). The EEOC has failed to meet this burden and their arguments go to the weight of the evidence in any event, not the admissibility.

C. The IDES Records Are Not More Prejudicial Than Probative

Finally, the EEOC argues that the records are more prejudicial than probative because *one of the documents* is written in the first person and accordingly purport to be written by Kerr. Given that the records are clearly prepared by the IDES, there is little risk of confusion on this front and the EEOC can certainly make this argument to the jury. Moreover, the records are undoubtedly probative, as they concern Kerr's change of story regarding the key events at issue

in this case. Other courts in the Seventh Circuit have agreed, admitting IDES records that show shifting narratives. *Margelewski v. Cosco Indus., Inc.*, No. 06 C 6349, 2008 WL 4542991, at *2 (N.D. Ill. Apr. 1, 2008) (overruling hearsay and relevance objections regarding defendant's statement to the IDES regarding why it terminated plaintiff where the statement was "inconsistent with explanations supervisors have given on other occasions").

For the foregoing reasons, the EEOC's objections to the IDES records filed at ECF # 99 should be overruled.

Respectfully submitted,

/s/ J. Bradley Spalding

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RENT-A-CENTER, INC.
5501 Headquarters Drive
Plano, Texas 75024
972.801.1465

Dated: May 11, 2018

CERTIFICATE OF SERVICE

I, **J. Bradley Spalding**, an attorney, certify that I served the attorney of record named below with a copy of **Defendant's Trial Brief Regarding the Causation Standard for Title VII Discrimination Claims** via ECF (*Electronic Case Filing*) on May 11, 2018:

Miles Shultz
Justin Mulaire
James L. Lee
Gwendolyn Young Reams
Gregory M. Gochanour

U.S. Equal Employment Opportunity Commission
500 West Madison Street, Suite 2000
Chicago, IL 60661
(312) 869-8045
miles.shultz@eeoc.gov

U.S. Equal Employment Opportunity Commission
131 M. Street, N.E.
Washington, DC 20507

/s/ J. Bradley Spalding

J. Bradley Spalding

EXHIBIT 1



Bureau of
Unemployment Insurance

Lisa Madigan
Attorney General
State of Illinois
Chicago
April 26, 2017

33 South State Street-Suite 992
Chicago, Illinois 60603
Telephone: 312-793-9210

J. Bradley Spalding
Littler Mendelson, P.C.
1301 McKinney Street, Suite 1900
Houston, TX 77010

RE: *EEOC v. Rent-A-Center East, Inc.*
U. S. Dist. Ct. C. D. IL 16 cv 02222
Subpoena for IDES Records of: Megan Kerr

Dear Mr. Spalding:

This letter will serve as a response to the March 21, 2017 subpoena served on the Illinois Department of Employment Security ("IDES").

Pursuant to the court's April 25, 2017 order, IDES is producing the Fifty-Five (55) pages of responsive IDES records related to Megan Kerr/Vanna. Also enclosed is a completed Direct Questions to be Propounded to Custodian of Records. With this submission, IDES is in compliance with the subpoena and will consider this matter closed.

Should you have any questions, please contact me.

Very truly yours,
LISA MADIGAN
STATE OF ILLINOIS
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Andrew L. Dryjanski".

ANDREW L. DRYJANSKI
Assistant Attorney General
andrew.dryjanski@illinois.gov

received
10.01.17

DEFENDANT'S
EXHIBIT
Sub Caption Line

D42

Adjudication: Summary**Claimant Information**

Name:	megan L. vanna	Claimant ID:	5530786	Hide Detail
SSN:	Redacted	Date of Birth:	Redacted	BYB: 08/09/2015
Address:	11810 S KOMENSKY AVE APT 303 ALSIP, IL 60803 USA	Primary Telephone:	(708) 800-5341	LEP: English
Local Office:	14 - Harvey Office			
Last Week Certified:	08/22/2015	Last Week Paid:	02/07/2015	Payment Method: No Payment Method
Date of Claim:	03/13/2016	Claim Status:	Filed	Last Day Worked: 08/14/2014
LEU:	Redacted RENT-A-CENTER EAST INC / RENT-A-CENTER EAST INC	BCE:	4082494 RENT-A- CENTER EAST INC / RENT-A- CENTER EAST INC	WBA: \$ 260.00 MBA Balance: \$ 8,760.00 Dep Allow: \$ 0.00

Employer Information

Account Number:	Redacted	FEIN:	Redacted	T/R:	Taxable	Hide Detail
Employer Name:	RENT-A-CENTER EAST INC	DBA:	RENT-A-CENTER EAST INC	Telephone:	(800) 275-2896	
Main Address:	5501 HEADQUARTERS DR PLANO, TX 75024-5837	Region:	Chicago Region	Plant Coded:	Yes	
		POA/Rep:	Yes	Relationships:	Yes	
Notice of Claim Receipt/Response Method:		Effective Date:				
SIDES E-Mail Address:		Effective Date:				

Current Issue Information

Issue Detection Date:	08/04/2014	Section Of The Law:	602A	Source Of Issue:	Claim Application
Protest Received:	Yes	Timely:	Yes	Status:	Completed
Protesting Employer:	RENT-A-CENTER EAST INC / RENT- A-CENTER EAST INC	Protest Date:	08/15/2014		

Employment Information

Rate Of Pay:	13.20 Per Hour
Length of Employment:	
From:	05/01/2005
To:	07/21/2014
Hours of Employment:	
From:	08:00 AM
To:	08:00 PM

Printable Adjudication Summary

Page 2 of 6

Employer Name:	RENT-A-CENTER EAST INC
UI Account Number:	Redacted
Phone Number:	(217) 550-8648
What were the claimant's job duties?	Manager

Issue Confirmation

Should this interview continue under a different section of the law?	No
If yes, what is the correct issue?	
Should this interview stop because it is a non-issue?	No
Waiver: The claimant waives the right to seven day notice of interview on this issue and understands that the information provided will be used to determine eligibility for benefits.	Not Applicable

Language

Will the interview be conducted in English?	Yes
If no, in what language will the interview be conducted?	
If Other, please specify:	
Translator:	

Contacts

Contact Name:	Megan Kerr
Phone Number:	217-550-8648
Ext:	
Contact Date:	08/18/2014
Time:	10:47 AM
Result:	Made Contact
Action Taken:	Interview Held
Tickler Date:	
For:	
If Other, please explain:	
Key identifiers verified:	By Telephone
If other, explain	
If not verified, explain	

Claimant Guided Interview**Misconduct**

What was the date that you were discharged?	07/21/2014
Who discharged you?	Jason Morris

What is that person's title?	Store Manager
How did you find out that you were discharged?	In Person
What reason were you given for the discharge?	I was told I wasn't authorized to use a vehicle.
Describe the last act, omission, or circumstance which led to the discharge.	We donated time to certain charities. In the past I had asked to use a vehicle. The Sunday before that Sunday, I used the (company) vehicle. On Monday he told me I wasn't authorized to use the vehicle. I had been using it every other month and I had been there 10 years.
Explain why the act(s), failure to act, or the circumstances occurred. Explain any circumstances that were not within your control.	He was a newer manager. It was the company box truck. I was moving homeless people from the shelter into a home. The organization was at a church and we worked for GOODWILL too. This particular Manager doesn't spend time or anything to charitable events. I asked for permission beforehand. The Saturday previous, he gave me authorization then on Monday he let me go.
Was there a company policy or rule?	Unknown
What was the policy/rule or expected conduct/performance? (i.e. what should you have done?)	I had been asking for permission to use the vehicle all along.
Had you received any prior warning about this type or similar conduct?	No
Warnings	
Final Questions	
Were you aware that you could be discharged for not complying?	No
Describe (if any) other explicit instructions given to you by the employer for the same or similar act, omissions, or circumstances:	None
Describe what (if anything) you did to prevent the violation/circumstance that led to the discharge:	Q: Were there some personal issues between you and the new Manager? A: Yes there was some personal issues. From the time he came in, I was demoted. They gave me a small work load, efforts to make me quit.
Describe, if you are aware, what effect the action, omission, or circumstance had on the employer (e.g. physical damage to property, loss of profits, etc.):	It didn't affect them negatively. It was a positive way to promote the company within the community.

Initial Screening

Is an employer interview required? Yes

Issue Confirmation

Should this interview continue under a different section of the law? No

If yes, what is the correct issue?

Should this interview stop because it is a non-issue? No

Contacts

Contact Name: Unknown
Employer Name: Rent-A-Center, Inc.
Title: c/o Barnett & Associates
Phone Number: 516-877-2860
Ext:
Contact Date: 08/18/2014
Time: 11:01 AM

Result: Left Message
 Action Taken: Left a message with a request for a call back within 48 hours (8/20/14).
 Tickler Date:
 For:
 If Other, please explain:

Contacts

Contact Name: Unknown
 Employer Name: Rent-A-Center, Inc.
 Title: c/o Barnett & Associates
 Phone Number: 516-877-2860
 Ext:
 Contact Date: 08/21/2014
 Time: 04:09 PM
 Result: Final - Information Not Provided
 Action Taken: No response from the employer
 Tickler Date:
 For:
 If Other, please explain:

Employer Guided Interview**Misconduct****Warnings****Final Questions****Sources**

Source: Claimant Questionnaire
 If Other, explain:
 Contact Name: Megan Kerr
 Title:
 Phone Number: 217-550-8648
 Ext:
 Contact Date: 08/21/2014
 Time: 04:12 PM
 Comments: The claimant's questionnaire indicates that she was discharged because of "Using a company vehicle with (out) authorization..."
 Source: Protest
 If Other, explain:
 Contact Name: John Campbell @ Barnett Associates, Inc.
 Title: Account Manager
 Phone Number: 516-750-7077

Ext:
 Contact Date: 08/21/2014
 Time: 04:14 PM
 Comments: Protest received in a timely manner; it indicates, "Unauthorized use of company vehicle."
 Source: Other
 If Other, explain: Attachments

Contact Name:

Title:

Phone Number:

Ext:

Contact Date: 08/21/2014

Time: 04:14 PM

Comments: Attached to the employer's protest are the company policies.

Other Sources

Information From Other Sources

Is information from other sources required? Yes

Claimant Rebuttal

Rebuttal Screening

Is a claimant rebuttal required? No

Employer Rebuttal

Rebuttal Screening

Is an employer rebuttal required? No

Determination

Issue Statement

Issue Statement: Was the claimant discharged for misconduct connected with the work?

Evidentiary Fact

Evidentiary Fact: The evidence shows the claimant was discharged from RENT-A-CENTER EAST INC / RENT-A-CENTER EAST INC because (Reason).

Detailed Facts

Reason:

of a company-owned vehicle policy violation. The claimant had used the company vehicle for personal use, however, she previously used the company-owned vehicle many times for the same purpose (i.e. charitable event), for more than a year with the consent of her immediate supervisor.

Statement of Reasoning

Statement of Reasoning:

Since the claimant's action, which resulted in her discharge did not harm the employer or other employees,

Determination Statement

Determination Statement: the claimant is not ineligible for benefits from (From) in regard to this issue.

Decision Information

Determination: Allow
Determination Date: 08/21/2014
From: 08/03/2014
To: 12/31/9999
Determination Mailed Date (Claimant): 08/22/2014
Determination Mailed Date (Employer): 08/22/2014
Party Status: Yes
Workload Credit: Yes



kerr

Misconduct Questionnaire

You indicated that you were discharged. Under Section 602A of the Illinois Unemployment Insurance Act, an individual who is discharged because of misconduct connected with his/her work, is ineligible for unemployment benefits. Please provide information about your separation from RENT-A-CENTER EAST INC. The information you provide will be used for the purpose of determining your eligibility for benefits.

You will receive a notice by mail with the date and time an interview will be held regarding your separation. At the time of the interview you may provide more detailed information.

Section A: Employment Information		
Employer Name RENT-A-CENTER EAST INC		Employer Telephone Number
Length of Employment From: 05/01/2005 To: 07/21/2014	Work Hours From: 8:00 AM To: 8:00 PM	Wages \$13.20 Per Hour
Type of Work (e.g. retail sales, cook, office manager, etc) manager	Job Duties manages acc,sales,collections,employees	
Section B: Reason For Discharge		
What was the date you were discharged?	07/21/2014	
Who discharged you?	Jason moris	
What is that person's title?	store manager	
What reason were you given for the discharge?	using a company vehicle with authorization	
Describe the last act, omission, or circumstance that led to your discharge on that date.	Used a company vehicle on Sunday; With managers permission and given keys on Saturday to assist with a charity event. Reported to work on Monday. I was told I did not have permission and was let go.	
Was there a company policy or rule concerning the last act/circumstance that caused your discharge?	Yes	
What was the policy/rule or expected conduct/performance?	company vehicles are not Authorized for use during none business hours. (however exceptions have been made in past)	
Had you received any prior warnings about this type or similar conduct? <i>if Yes, what type of warning did you receive, by whom and when?</i>	No	
Name	Date	
	01/01/1980	
Type Verbal		
Were you aware that you could be discharged for not complying with the rule or policy?	No	
Describe, if you are aware, what effect the action, omission, or circumstance had on the employer (e.g. physical damage to property, loss of profits, etc.)		
No negative circumstances arose because of my action. In fact my action brought Rent-Center in to a more positive lite with the community.		
Section C: Electronic Signature		
Name : megan L. kerr	Date: 08/04/2014	
Telephone Number: (217) 550-8648		

vanna

Misconduct Questionnaire

You indicated that you were discharged. Under Section 602A of the Illinois Unemployment Insurance Act, an individual who is discharged because of misconduct connected with his/her work, is ineligible for unemployment benefits. Please provide information about your separation from RENT-A-CENTER EAST INC. The information you provide will be used for the purpose of determining your eligibility for benefits.

You will receive a notice by mail with the date and time an interview will be held regarding your separation. At the time of the interview you may provide more detailed information.

Section A: Employment Information		
Employer Name RENT-A-CENTER EAST INC		Employer Telephone Number
Length of Employment From: 09/05/2005 To: 08/14/2014	Work Hours From: 8:00 AM To: 5:00 PM	Wages \$750.00 Per Week
Type of Work (e.g. retail sales, cook, office manager, etc) management	Job Duties sales credit collections office management	
Section B: Reason For Discharge		
What was the date you were discharged?	08/14/2014	
Who discharged you?	jason moorise	
What is that person's title?	store manager	
What reason were you given for the discharge?	used company vehicle for personal business	
Describe the last act, omission, or circumstance that led to your discharge on that date.	worked at a volunteer event scheduled by store manager came back to work to be fired	
Was there a company policy or rule concerning the last act/circumstance that caused your discharge?	No	
What was the policy/rule or expected conduct/performance?	verbal councile	
Had you received any prior warnings about this type or similar conduct?	No	
If Yes, what type of warning did you receive, by whom and when?		
Name: n/a	Date 01/01/0001	
Type Verbal		
Were you aware that you could be discharged for not complying with the rule or policy?	No	
Describe, if you are aware, what effect the action, omission, or circumstance had on the employer (e.g. physical damage to property, loss of profits, etc.)		
none. store gained sales accounts.		
Section C: Electronic Signature		
Name: megan L, vanna		Date: 03/15/2016
Telephone Number: (708) 800-5341		