University of Miami Law Review

Volume 7 | Number 3 Article 13

4-1-1953

Administrative Law -- Ruling Based on Hearsay Evidence

William A. Ingraham

Follow this and additional works at: https://repository.law.miami.edu/umlr

Recommended Citation
William A. Ingraham, *Administrative Law -- Ruling Based on Hearsay Evidence*, 7 U. Miami L. Rev. 426 (1953)
Available at: https://repository.law.miami.edu/umlr/vol7/iss3/13

This Case Noted is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

CASES NOTED

ADMINISTRATIVE LAW — RULING BASED ON HEARSAY EVIDENCE

The unemployment compensation agency mailed plaintiff a notice of ineligibility. After the statutory time for appeal lapsed, plaintiff filed an appeal claiming she had not received the notice. The agency's board of review found the notice had been mailed, basing its decision on hearsay evidence. *Held*, hearsay may be received in evidence by an administrative agency, but it cannot form the sole basis for a decision. *Borgia v. Board of Review*, 91 A.2d 441 (N.J. Super. Ct. 1952).

As a general rule, administrative agencies are not bound by technical rules of evidence unless so provided by statute.[1] Agencies are presumed to be expert in the use of evidence.[2] Hearsay may be admitted,[3] but there is a conflict as to whether a finding can be predicated solely on hearsay evidence.[4] The courts which do not permit such a finding follow the *residuum* rule developed by New York.[5] By this reasoning hearsay is admissible, but there

---

1. Opp Cotton Mills v. Administrator, 312 U.S. 126 (1941); 60 Stat. 241, 5 U.S.C. § 1006(c) (1946) (provides for the exclusion of irrelevant, immaterial, or unduly repetitious material).

2. Ogden Iron Works v. Industrial Commission, 102 Utah 492, 132 P.2d 376 (1943); 1 WIGMORE, EVIDENCE 36 (3d ed. 1940).

3. Consolidated Edison v. NLRB, 305 U.S. 197, 230 (1938); NLRB v. Cities Service Oil Co., 129 F.2d 933 ,2d Cir. 1942); Oughton v. NLRB, 118 F.2d 486 (3d Cir. 1941), *cert. denied* 315 U.S. 797 (1942); Superior Engraving Co. v. NLRB, 183 F.2d 783 (7th Cir. 1950) (it may be proper to exclude hearsay).

4. Willapoint Oysters v. Ewing, 174 F.2d 676 (9th Cir. 1949), *cert. denied* 338 U.S. 860, *rehearing denied* 339 U.S. 945 (1950); Tri-State Broadcasting Co. v. FCC, 68 App. D.C. 292, 96 F.2d 564, 566 (D.C. Cir. 1938) (interviews taken by examiner in ascertaining need for a new radio station were hearsay, and finding could not be based upon it); North Alabama Motor Express, Inc. v. Rookis, 244 Ala. 137, 12 So.2d 183 (1943); Walver v. City of San Gabriel, 20 Cal.2d 879, 129 P.2d 349 (1942) (hearsay insufficient to support the revocation of a license); Geegan v. Unemployment Compensation Commission, 76 A.2d 116 (Del. 1950) (board not allowed to base decision on letter from employment officer Florida, that applicant had not sought work in Florida); Durkin v. A. H. Luecht & Co., 379 Ill. 227, 40 N.E.2d 69 (1942); State *ex rel* DeWeese v. Morris, 221 S.W.2d 206 (Mo. 1949); Glen Alden Coal Co. v. Unemployment Compensation Board of Review, 168 Pa. Super. 534, 79 A.2d (1952). *Contra:* Montana Power Co. v. FPC, 185 F.2d 491 (D.C. Cir. 1950) (old newspaper accounts, while hearsay, were substantial and probative and a finding could be based on such); Ellers v. Railroad Retirement Board, 132 F.2d 636 (2d Cir. 1943) (if evidence is of a kind on which fair minded men are accustomed to rely, it can support a finding); *see* NLRB v. Remington Rand, 94 F.2d 862, 873 (2d Cir. 1938), *cert. denied* 304 U.S. 576 (mere rumor will not support a finding, but hearsay may do so if more is not conveniently available, and if in the end, the finding is supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs, L. Hand, J.).

5. Matter of Carroll v. Knickerbocker Ice Co., 218 N.Y. 435, 440, 113 N.E. 507, 509 (1916), 1 WIGMORE, EVIDENCE 30 (3d ed. 1940).

must be corroboration by judicially competent evidence to support the finding.[6]

This rule has been followed in cases involving federal agencies.[7] An administrative order may be set aside only if unsupported by substantial evidence.[8] Dictum of the United States Supreme Court has stated that uncorroborated hearsay or rumor would not constitute substantial evidence.[9] A deportation order, based mainly on hearsay, was set aside as being insufficient evidence to deprive an individual of a valuable privilege.[10]

The *residuum* rule has been liberally applied in some workmen's compensation cases where facts, circumstances, or inferences, together with hearsay, are allowed to support a finding.[11] A finding, however, cannot be based solely on hearsay.[12] Hearsay is used to supplement or explain the competent evidence.[13]

The principle case followed the more strict view in the acceptance of hearsay, but the evidence was sufficient to indicate that a letter had been

---

6. Reynolds v. Triborough Bridge & Tunnel Authority, 276 App. Div. 388, 94 N.Y.S.2d 841 (1950); Yates v. Mulrooney, 245 App. Div. 146, 281 N.Y.Supp. 216 (1935) (the fact that three bottles of the same brand of liquor were open in a tavern, together with a hearsay letter from manufacturer was sufficient to show liquor had been diluted); Matter of Carroll v. Knickerbocker Ice Co., 218 N.Y. 435, 440, 113 N.E. 507, 509 (1916).

7. NLRB v. Service Wood Heel Co., 124 F.2d 470 (1st Cir. 1941) (weak corroboration made hearsay trustworthy); Oughton v. NLRB, 118 F.2d 486 (3d Cir. 1941), *cert. denied* 315 U.S. 797 (1942); Union Drawn Steel Co. v. NLRB, 109 F.2d 587 (3d Cir. 1940) (weak corroboration from circumstantial evidence); NLRB v. Bell Oil & Gas Co., 98 F.2d 406 (5th Cir. 1938), *see* Consolidated Edison v. NLRB, 305 U.S. 197, 230 (1938). *Contra:* Ellers v. Railroad Retirement Board, 132 F.2d 636 (2d Cir. 1943); John Bene and Sons, Inc. v. FTC, 299 Fed. 468 (2d Cir. 1924) (evidence though legally incompetent, if of the kind that usually affects fair-minded men in the conduct of their affairs, should be considered); Montana Power Co. v. FPC, 185 F.2d 491 (D.C. Cir. 1950); *see* NLRB v. Remington Rand, 94 F.2d 862, 873 (2d Cir. 1938).

8. 60 STAT. 243, 5 U.S.C. § 1009(e) (1946); Consolidated Edison v. NLRB, 305 U.S. 197 (1939); Union Drawn Steel Co. v. NLRB, 109 F.2d 587 (3d Cir. 1940); International Ass'n v. NLRB, 71 App. D.C. 175, 110 F.2d 29, 35 (D.C. Cir. 1938), *affirmed* 311 U.S. 72 (1940) (only convincing evidence, not lawyers' evidence is required).

9. *See* Consolidated Edison v. NLRB, 305 U.S. 197, 230 (1938).

10. Bridges v. Wixon, 326 U.S. 135 (1945) (a stricter interpretation of evidence rules is applied in deportation proceedings).

11. Associated General Contractors v. Cardillo, 70 App. D.C. 303, 106 F.2d 327 (D.C. Cir. 1938); American Security Co. v. Minard, 118 Ind. App. 310, 77 N.E.2d 762 (1948); DeLong v. Iowa State Highway Comm'n, 229 Iowa 700, 295 N.W. 91 (1941); Altschuler v. Bressler, 289 N.Y. 463, 46 N.E. 2d 886 (1943)(distinguished from Carroll v. Knickerbocker on the basis of circumstances in each case); Maley v. Thomasville Furniture Co., 214 N.C. 589, 200 S.E. 438 (1939); Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940); American Furniture Co. v. Graves, 141 Va. 1, 126 S.E. 213 (1925) (vague circumstances were sufficient corroboration).

12. Libby, McNeill and Libby v. Alaska Industrial Board, 191 F.2d 260 (9th Cir. 1951), *cert. denied* 342 U.S. 913 (1952); Peoria Cordage Co. v. Industrial Board of Ill., 284 Ill. 90, 119 N.E. 96 (1918); Reck v. Whittlesberger, 181 Mich. 463, 148 N.W. 247 (1914); Andricsak v. National Fireproofing Corp., 3 N.J. 466, 70 A.2d 750 (1950); *Matter of* Carroll v. Knickerbocker Ice Co., 218 N.Y. 435, 440, 113 N.E. 507, 509 (1916); Johnson v. Payne-Yost Construction Co., 292 Pa. 509, 141 Atl. 481 (1928); Ogden Iron Works v. Industrial Comm'n, 102 Utah 492, 132 P.2d 376 (1942).

13. Libby, McNeill and Libby v. Alaska Industrial Board, 191 F.2d 260 (9th Cir. 1951), *cert. denied* 342 U.S. 913 (1952); Maley v. Thomasville Furniture Co., 214 N.C. 589, 200 S.E. 438 (1939); Ogden Iron Works v. Industrial Comm'n, 102 Utah 492, 132 P.2d 376 (1943).

mailed to plaintiff. The case follows the authority of a previous New Jersey case which denied workmen's compensation because the only available evidence was hearsay, thus denying the right of the workman's beneficiary.[14]

Perhaps a better rule in cases of this type would permit reliance on substantial hearsay when legally competent evidence is not available.[15] By requiring agencies to follow outmoded rules of evidence, justice is often denied, especially in workmen's compensation cases. Administrative findings should be permitted on reliable, trustworthy evidence, regardless of technical common law admissibility.[16]

William A. Ingraham

COURTS—CIRCUIT JUDGES—EFFECT OF ERROR IN EN BANC PROCEEDINGS

The defendant circuit judge issued a search warrant and pursuant to statutory provisions,[1] appointed an elisor to serve it. The plaintiff sheriff filed a declaratory bill and requested the circuit, excepting the defendant,[2] to hear the cause *en banc*. The senior Judge[3] then assigned the cause to five judges within the circuit. One of the judges recused himself, convinced an *en banc* proceeding would be contrary to law and result in reversible error. The recusant then asserted that the judgment of one circuit judge is the determination of the judicial circuit under the Florida Constitution.[4] *Sullivan v. Milledge*, 2 Fla. Supp. 125 (11th Cir. Ct. 1949).

Where the constitution provides for more than one judge in a particular circuit,[5] the questions to be resolved are:

1. Is it reversible error, under existing law, and in the disposition

14. Andricsak v. National Fireproofing Corp., 3 N.J. 466, 70 A.2d 750 (1950).

15. *See* NLRB v. Remington Rand, 94 F.2d 862, 873 (2d Cir.), *cert. denied* 304 U.S. 576 (1938).

16. 1 WIGMORE, EVIDENCE 41-42 (3d ed. 1940) (*residuum* rule is not wise and satisfactory for general adoption).

1. FLA. STAT. § 47.12 (1951). . . . A justice of the peace or a constable, in the respective counties, may serve all process in cases where the sheriff is interested, and in cases of necessity the judge of the circuit court may appoint an elisor to act instead of the sheriff.

2. Since the conflict arose between the sheriff and defendant Circuit Judge, plaintiff felt said Judge ought to be excepted.

3. FLA. CONST. Art. 5, § 43. . . . Wherever there are two or more Circuit Judges appointed for a Circuit the business may be divided among the Circuit Judges . . . as may be prescribed by law, and where no provision has been made by law, the distribution of the business of the Circuit between the Circuit Judges of the Circuit, . . . and the allotment or assignment of matters and cases to be heard, decided, ordered, tried, decreed or adjudged, shall be controlled or made when necessary by the Circuit Judge holding the commission earliest in date. . . .

4. FLA. CONST. Art. 5, § 43. The Legislature may from time to time . . . provide for the appointment of one or more additional Circuit Judges for such Circuit. . . . He shall have all the powers and perform all the duties that are or may be provided or prescribed by the Constitution or by statute . . . and all statutes concerning Circuit Judges shall apply to him.

5. *Ibid.* State *ex rel.* Palmer v. Atkinson, 116 Fla. 366, 156 So. 726 (1934).