

**ORDER GRANTING APPELLANT'S MOTION TO INTRODUCE
RECORDED STATEMENTS OF UNAVAILABLE WITNESS**

IN THE MATTER OF THE APPEAL OF:

DARRELL S. BOONE, Appellant,

vs.

DEPARTMENT OF PUBLIC WORKS, SOLID WASTE MANAGEMENT,
and the City and County of Denver, a municipal corporation, Agency.

On September 24, 2013, Appellant served notice, under Colorado Rule of Evidence (CRE) 807, that he intended to offer into evidence the recorded statements from Daniel Abeyta's pre-disciplinary meeting. The Agency filed a Motion in Limine to Exclude Abeyta Recording, to which the Appellant filed a reply.

The parties submitted briefs regarding the admissibility of Abeyta's pre-disciplinary meeting statements in light of his unavailability to testify at hearing. The parties agreed the principal issue was the applicability of CRE 804(b)(3), an exception to the rule against hearsay evidence titled "Statement Against Interest."

CRE 804(b)(3) is one of several hearsay exceptions applying to an unavailable declarant. The test for admissibility of a statement against interest is if the statement(s) subject the declarant to civil or criminal liability, and is so significant that a reasonable person in the declarant's position would not have made the statement unless he believed it to be true. CRE 804(b)(3); Williamson v. U.S., 512 U.S. 594, 602 (1994).

The parties agree Abeyta is in jail with no possibility of release to testify. As such, he is, unquestionably, unavailable.

The Agency disputes the second element, claiming Abeyta's pre-disciplinary meeting statements are unreliable. At his pre-disciplinary meeting, Abeyta apparently stated he alone was responsible for the illegal dumping and that Boone had no role it whatsoever. Although the Agency now claims Abeyta's admission is unreliable as evidence in the present case, the Agency found Abeyta's statements sufficiently reliable to terminate his employment. The Agency may not credit statements only for their inculpatory but not exculpatory value.

Based on the Agency's acceptance of Abeyta's statements in his own case, there is sufficient indicia of reliability to permit the entry into evidence of Abeyta's pre-disciplinary meeting statements in the present case. Therefore, Appellant's motion to admit the pre-disciplinary meeting statements of Daniel Abeyta is granted, and the Agency's motion to exclude them is denied.

DONE this 5th day of November, 2013.


Bruce A. Plotkin
Career Service Hearing Officer

I certify that, on November 5, 2013, I served a correct copy of this Order on the following, in the manner indicated:

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