Analysis and Relevancy

Michigan State University
March 8, 2023
Kelly Gallagher, Grand River Solutions
Agenda

01 Elements Analysis

02 Evidence authenticity, reliability, and credibility

03 Relevancy Determinations

Grand River Solutions
Decision-making Procedure

• **Investigation Report:** The investigator will prepare a written investigation report fairly summarizing the investigation and relevant evidence directly related to the allegations. OIE will send the investigation report and relevant evidence to the parties and their respective advisors.

• **Evidentiary Decisions:** The Resolution Officer makes evidentiary decisions and has discretion to determine relevancy and/or redundancy of the questions and evidence.... Relevant questions regarding credibility are permitted.

• **Decision Regarding Responsibility:** The decision-maker shall evaluate the evidence and decide whether the respondent is responsible for violating this Policy. The decision-maker shall objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations shall not be based on a person’s status as a claimant, respondent, or witness.
Findings of Fact

• A "finding of fact"
  • The decision whether events, actions, or conduct occurred, or a piece of evidence is what it purports to be
  • Based on available evidence and information
  • Determined by a preponderance of evidence standard
  • Determined by the fact finder(s)

• For example...
  • Claimant reports that they and Respondent ate ice cream prior to the incident
  • Respondent says that they did not eat ice cream
  • Witness 1 produces a timestamped photo of Respondent eating ice cream
Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate
Allegation: Fondling

Fondling is the:
• touching of the private body parts of another person
• for the purpose of sexual gratification,
• Forcibly and/or without the consent of the Claimant,
• including instances where the Claimant is incapable of giving consent because the Claimant is incapacitated (whether as a result of drugs, alcohol or otherwise), unconscious, asleep or otherwise physically helpless or mentally or physically unable to make informed, rational judgments.
<table>
<thead>
<tr>
<th>Touching of the private body parts of another person</th>
<th>For the purpose of sexual gratification</th>
<th>Without consent due to lack of capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Undisputed: Claimant and Respondent agree that there was contact between Respondent’s hand and Claimant’s vagina.</td>
<td>Respondent acknowledges and admits this element in their statement with investigators. “We were hooking up. Claimant started kissing me and was really into it. It went from there. Claimant guided my hand down her pants…”</td>
<td>Claimant: drank more than 12 drinks, vomited, no recall Respondent: C was aware and participating Witness 1: observed C vomit Witness 2: C was playing beer pong and could barely stand Witness 3: C was drunk but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.</td>
</tr>
</tbody>
</table>
The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:
- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”
Irrelevant or Impermissible

Information protected by an un-waived legal privilege

Claimant’s prior sexual history

Medical treatment and care
When is evidence relevant?

- Logical connection between the evidence and facts at issue
- Tends to make a fact more or less probable than it would be without that evidence
- Assists in coming to the conclusion – it is “of consequence”
Questions to assess evidence authenticity

Never assume that an item of evidence is authentic.

Ask questions, request proof.

Request further investigation of the authenticity if necessary.
Is it authentic?

Never assume that an item of evidence is authentic.

- Question the person who offered the evidence
- Request originals
- Obtain originals from the source
- Have others review and comment on authenticity
- Are there other records that would corroborate?
Credibility versus Reliability

**Reliability**
- I can trust the person's account of their truth because it is consistent with other evidence.
- It is probably true and I can rely on it.

**Credibility**
- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.
Reliability

- Inherent plausibility
- Logic
- Corroboration
- Other indicia of reliability
Credibility

No formula exists, but consider the following:

- motive to fabricate
- plausibility
- consistency
- character, background, experience, and training
- coaching
Opinion Evidence

When might it be relevant?

Grand River Solutions