

A defendant was charged with fraud for allegedly making false statements to obtain federal workers' compensation benefits. At trial, the prosecution sought to introduce an application for benefits in which the prosecution alleged that the defendant had lied about his ability to work. The defendant objected, arguing that the prosecution could not authenticate the signature on the document as his and therefore could not link the document to him. In response, the prosecution called a Department of Labor employee who was assigned to work on the defendant's file. The employee testified that after receiving a telephone inquiry from a person using the defendant's name, she mailed a letter to the defendant's home address containing instructions on how to apply for benefits. She then testified that, a week later, the application for benefits offered by the prosecution arrived by mail at her office.

Should the court admit the application?

- A. No, because it is hearsay not within any exception.
- B. No, because the prosecution failed to lay a proper foundation for the application.
- C. Yes, because it has been properly authenticated.
- D. Yes, because it is a statement of the defendant's then-existing physical condition.

Explanation:

Authenticating documents

(FRE 901)

Common methods	Stipulation or eyewitness testimony
Ancient documents & data compilation	At least 20 years old when offered condition creates no suspicion about authenticity <i>and</i> was in place where authentic document would likely be
Public records	Record was recorded or filed in public office as authorized by law or in office where that type of item is kept
Reply letter	Document written in response to communication <i>and</i> contents make it unlikely response was written by someone other than recipient of first communication
Handwriting	Comparison – expert witness or trier of fact compares authenticated against disputed handwriting (or fingerprints, hair, cloth fibers) <i>or</i> Non-expert opinion – witness with personal knowledge of authentic handwriting not acquired for litigation gives opinion on disputed handwriting
Self-authenticating	Public documents with official's signature & authorized by official or seal Certified copies of public records & records of regularly conducted activities Newspapers, periodicals & official publications Documents with trade inscription Acknowledged documents Commercial papers, including signature & related documents

FRE = Federal Rule of Evidence.

Documentary and other tangible evidence is admissible provided the party seeking admission authenticates the evidence. One method of authenticating documentary evidence is to establish that the document qualifies as a **reply letter**. This is accomplished by showing that:

the document was written in **response to** an **earlier communication** *and*

the contents make it **unlikely** that the response was **written by someone other than** the **recipient** of the earlier communication.

This method of authentication stems from the general rule that an item's distinctive characteristics—taken together with other relevant circumstances—are sufficient to prove that the item is what the proponent claims it to be.

Here, the prosecution seeks to introduce an application purportedly submitted by the defendant. The prosecution has shown that the application was completed in response to an earlier letter sent by a Department of Labor employee to the defendant's address. The contents of the application and the circumstances surrounding its submission make it unlikely to have been written by someone other than the defendant. Therefore, the application qualifies as a reply letter. Since a proper foundation was laid, the court should admit the application **(Choice B)**.

(Choice A) The application was authenticated as having been made by the defendant. As a result, it is excluded from the rule against hearsay as a statement of a [party-opponent](#).

(Choice D) Statements concerning the declarant's then-existing state of mind (eg, motive, intent, plan) or emotional/physical condition (eg, mental feeling, pain, bodily health) are excepted from the rule against hearsay. But here, no exception is necessary since the application is a nonhearsay statement of a party-opponent.

Educational objective:

A document can be authenticated by establishing that it qualifies as a reply letter. To do so, the proponent must show that (1) the document was written in response to an earlier communication and (2) the contents make it unlikely that it was written by someone other than the recipient of the earlier communication.

References

Fed. R. Evid. 901 (authenticating or identifying evidence).