

A woman sued a factory owner under an age discrimination statute, alleging that the factory owner refused to hire her because she was over age 65. The factory owner's defense was that he refused to employ the woman because he reasonably believed that she would be unable to perform the job. The factory owner seeks to testify that the woman's former employer advised him not to hire the woman because she was unable to perform productively for more than four hours a day.

Is the factory owner's testimony admissible?

- A. No, because the factory owner's opinion of the woman's abilities is not based on personal knowledge.
- B. No, because the former employer's statement is hearsay not within any exception.
- C. Yes, as evidence of the factory owner's reason for refusing to hire the woman.
- D. Yes, as evidence that the woman would be unable to work longer than four hours per day.

Explanation:

Evidence is **admissible** if it is **relevant**—ie, tends to make a material fact more or less probable—and **not excluded** by law or other evidentiary rules. For example, the **rule against hearsay bars** otherwise relevant **out-of-court statements** that are (1) offered to prove the **truth of the matter asserted** therein and (2) not **excluded or excepted** from the hearsay rule. But the hearsay rule does not bar out-of-court statements that are offered for *another* purpose—eg, to show the statement's effect on the listener.

Here, any evidence pertinent to the factory owner's hiring decision is relevant in this age discrimination suit. The factory owner seeks to testify that he did not hire the woman because he reasonably believed that she was unable to perform the job. That belief stemmed from the former employer's out-of-court statement that the woman was unable to work more than four hours a day. Although this statement is not admissible to prove the truth asserted therein, it *is* admissible to show the statement's effect on the factory owner's hiring decision **(Choices B & D)**.

(Choice A) The factory owner is not offering an opinion of the woman's abilities, which would require personal knowledge. He is instead seeking to testify as to why he did not hire her.

Educational objective:

The hearsay rule bars out-of-court statements that are offered to prove the truth of the matter asserted therein, but not those that are offered for some other purpose—eg, to show the statement's effect on the listener.

References

Fed. R. Evid. 801 (definition of hearsay).

Fed. R. Evid. 401 (relevance).

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Admissibility of out-of-court statements

