

K. EVIDENCE, in General

OVERVIEW:

Pursuant to § [7118\(a\)\(6\)](#) of the Statute, parties in a ULP hearing are not bound by rules of evidence whether statutory, common law, or adopted by a court.

- Section [2423.31\(b\)](#) provides that parties are not bound by rules of evidence whether statutory, common law or adopted by a court. An ALJ may receive any evidence, **except** that which may be excluded on the grounds that it is immaterial, irrelevant, unduly repetitious, or customarily privileged.
- Even though the Federal Rules of Evidence are not binding, they offer instructive guidance when dealing with evidentiary disputes. A solid understanding of the Rules is indispensable for the successful litigator. Any reference to the Federal Rules can be persuasive when dealing with objections.

See [24th Combat Support Group, Howard Air Force Base, Republic of Panama](#), 55 FLRA No. 45, 55 FLRA 273, 283 (1999); [United States Customs Service, South Central Region, New Orleans District, New Orleans, Louisiana](#), 53 FLRA No. 67, 53 FLRA 789, 794 (1997) (the determination of the matters to be admitted into evidence is within the broad discretion of an ALJ and the parties are not bound by the rules of evidence); [Indian Health Service, Winslow Service Unit, Winslow, Arizona](#), 54 FLRA No. 17, 54 FLRA 126, 127 (1998) (ALJ did not abuse discretion by denying GC's Trial Attorney an opportunity to recall a prior witness to provide rebuttal testimony); Compare [Air Force Flight Test Center, Edwards Air Force Base, California](#), 55 FLRA No. 21, 55 FLRA 116, 120-21 (1999) (ALJ did not abuse discretion in excluding disputed evidence which came into existence **after** the alleged unilateral changes); with [U.S. Department of Justice, Immigration and Naturalization Service, Washington, D.C.](#), 55 FLRA No. 20, 55 FLRA 93, 97-98 (1999) (Authority remanded case to because ALJ abused discretion in refusing to admit relevant evidence).

Q [Part 2, Chapter D](#) concerning ALJ Involvement and Decorum at Hearing; and
[Part 2, Chapters S](#) and [BB](#) concerning Direct Examination, and Cross-Examination where various Fed. R. Evid. are discussed.