

## §296 Sample Letter to Lay Witness

**Date**

**Name**

**Address**

**City, State, Zip**

Re: Disability Hearing of [**Claimant's Name**]

*Date of Hearing:* \_\_\_\_\_

*Time of Hearing:* \_\_\_\_\_

*Place of Hearing:* \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Dear [**witness**]:

This letter is to follow up our recent telephone conversation in which we discussed your testimony as a witness in a disability hearing. It is intended to give you general information.

A disability hearing is very different from a court hearing. There will be no audience or observers at the hearing like there is often at court hearings. A disability hearing is private. The hearing is quite informal, especially when compared to a court hearing. Just about the only formality is that you will be expected to testify under oath.

The hearing is held in a small conference room and is presided over by an administrative law judge. The judge is a neutral person whose job it is to find out all the facts about the claimant's disability. No lawyer represents the government in disability cases. Thus, no lawyer representing the government will cross examine you.

A tape recorder is used to make a recording of hearing testimony. Therefore, it will be necessary for you to speak up and give audible answers to questions. Also, questions which can be answered yes or no ought to be answered that way since uh huh and huh uh answers don't transcribe well.

If someone else is testifying and you know the answer to a question but the person who is testifying doesn't know the answer, don't chime in. Don't offer to answer the question even if the person testifying asks you (unless the judge says its ok). It is necessary for you to wait your turn.

At the hearing I will ask you questions. I always ask about who you are, your relationship with the claimant, how long you have known the claimant, and how often you get to see the claimant. These questions are to establish the basis for testimony about your observations. Then, I'll ask about those observations.

Essentially, we'll just have a conversation about the claimant. There aren't any peculiar rules for testifying at disability hearings like there are for court testimony such as the "don't volunteer" rule or even the "hearsay" rule. Its ok to talk to me just like we talked on the telephone. But don't assume that because we've spoken on the telephone that I already know the answer. The person you are really

talking to at the hearing, of course, is the judge, not me. Therefore, if it helps, you may assume that I've forgotten everything you told me on the telephone and that you've got to tell it to me again.

You are expected to testify truthfully about things that you have observed. The best testimony is filled with examples of things you have seen with your own two eyes. Your job is to describe what you have seen.

Often, judges don't ask any questions of a witness such as you. However, if a judge does ask you any questions, I always regard it as a good sign. It means the judge is very interested in what you have to say. Judges, in my experience, don't "cross examine" witnesses like you might have seen witnesses cross examined on television. The judge is simply looking for all the facts in order to decide the case fairly. The judge certainly won't ask any trick questions or questions designed to embarrass.

There are only a few mistakes that occasionally people make in testifying. The worst is where a witness deliberately exaggerates the claimant's disability thinking that this will help the claimant win the case. But this usually backfires because the judge simply doesn't believe it.

Other mistakes occur where a witness tries to give "medical" testimony, that is, offers medical conclusions that really ought to come from a doctor; or where a witness tries to take over the role of the lawyer and argues the claimant's case, such as where the witness tells the judge that the claimant can't work, or should be found disabled because he needs help, etc.

There really are only a few rules for testifying:

1. *Tell the truth.*
2. Don't exaggerate to try to "help" the claimant.
3. But don't minimize either.
4. Testify only about things that you've observed.
5. It is ok to give examples and explain your answers by describing those things you have observed.
6. But leave arguing the case to me.

I will meet with you just before the hearing. If you have any last minute questions, you can ask me then. Otherwise, if you have any questions about your testimony after reading this letter, please feel free to telephone me.

Sincerely,

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[attorney]