**Section 270.446 Witness Testimony**

a) The ALJ may exercise reasonable control over the form of the examination and order of witnesses so as to make the examination effective for gathering the facts, avoiding delay, and protecting witnesses from harassment or undue embarrassment. The ALJ may limit the examination of witnesses to prevent cumulative or irrelevant evidence.

b) Before testifying, a witness shall declare by oath or affirmation and under penalty of perjury that he or she will testify truthfully.

c) Any individual is competent to testify as a witness so long as he or she is capable of understanding the nature of an oath or affirmation and giving an accurate account of facts within the witness' personal knowledge. In the absence of contrary evidence, a witness is presumed competent to testify. The ALJ determines competency of a witness.

d) A witness may appear voluntarily to testify or may testify under power of a subpoena issued by the Department/other entity under Section 270.440.

e) A witness compelled to testify in response to a subpoena may be accompanied and advised by an attorney.

f) A witness may testify as to facts within the witness' personal knowledge. A witness not qualified as an expert pursuant to Section 270.448 may only provide opinion testimony if the opinion is rationally based on the perception of the witness and helpful to a clearer understanding of the witness' testimony or a determination of the issues.

g) Any party may request to call any individual as a witness and conduct direct examination. Except for preliminary matters and facts already in evidence, questions on direct examination should be open-ended, non-leading questions.

h) The opposing party is entitled to cross-examine any witness. A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. In the interests of justice, the ALJ may limit testimony on cross-examination to subject matters testified about on direct examination.

i) A party may be allowed to examine an adverse witness as if under cross-examination.

j) The ALJ may question any witness pursuant to Section 270.452(g)(6).

k) If a witness uses a document to refresh memory for the purpose of testifying, either while testifying or before testifying, the ALJ may have the witness show the document to the opposing party and be cross-examined about the document.

l) In the interests of justice, at the request of a party, or an ALJ's own motion, the ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses.

m) The ALJ may direct that all excluded or non-excluded witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined or the hearing is ended.

(Source: Added at 42 Ill. Reg. 9226, effective July 1, 2018)