

Lay and Expert Opinions

The issue of witnesses expressing opinions sometimes arises during Board hearings. Generally, the Board does not allow into evidence opinions as to the ultimate issue to be decided by the Board. For example, witnesses are not allowed to answer questions such as “Was there just cause for the ten day suspension in this case?”, or “Did the employer refuse to bargain in good faith in this case?” Nonetheless, this does not mean that all opinion evidence is excluded. Both lay opinion and expert opinion are allowed into evidence under certain circumstances.

Lay Opinion - A lay witness (i.e., a person not testifying as an expert) may testify in the form of an opinion with respect to matters of which the witness has first hand knowledge if such opinion is helpful to a clear understanding of the testimony of a witness or the determination of the fact in issue.¹ For example, a lay witness may testify that a person was drunk if the witness observed how that person was behaving and smelled alcohol on the person’s breath. Other examples of a permissible lay opinion would be darkness, speed, age, height, weight, handwriting, voice identification, photo identification.

Expert Opinion - A party may seek during a Board hearing to offer an expert witness. The Board first would determine whether the witness qualified as an expert by knowledge, skill, experience, training or education. The usual manner of presenting the qualifications of a person as an expert is by preliminary examination and cross-examination in which the specific knowledge, training or experience which the person possesses is demonstrated and tested. If the Board qualifies the witness as an expert, the witness then would be allowed to testify in the form of opinion or otherwise as to scientific, technical or other specialized knowledge which

¹ For guidance, see Vermont Rules of Evidence, Rule 701.

would assist the Board to understand the evidence or determine a fact in issue.² Of course, the parties may stipulate to an expert's qualifications.

² For guidance, see Vermont Rules of Evidence, Rules 702-706.