

# FORM 11: Sample Redacted Affidavit

## AFFIDAVIT OF JOHN SMITH

STATE OF NEW YORK )

) ss:

COUNTY OF NEW YORK )

JOHN SMITH, being duly sworn, deposes and says:

1. I submit this affidavit in support of my appeal of CIGNA's discontinuance of my long term disability benefits.

### Personal History

2. I am [ ] years old. I grew up in [ ], New York and spent most of my life in the northeastern United States.
3. Prior to becoming disabled, I had always led an active lifestyle. In my free time, I participated in many rigorous outdoor activities, including snowboarding, riding my motorcycle, running, hiking and mountain biking as often as possible. I frequently worked on my house and completed repair projects for my parents' house and their restaurant. I also was a frequent swing dancer. The sense of accomplishment I felt from participating in these activities was very fulfilling.
4. I graduated with a Bachelor's Degree in [ ] and a Master's Degree in [ ], both in [ ] from [ ] University.

### General Work Background

5. From [ ] to [ ], I worked in [ ]. Beginning in [ ], I worked at [ ] as a project engineer and construction inspector on projects involving airport infrastructure, environmental remediation and contract administration. My work typically involved construction inspection, project scheduling and coordination, layout and surveying, procurement, fabrication oversight, preparation of contracts and contract administration, supervision of other engineering staff and acting as a liaison between clients and field crews. I was often sent to work on projects in different geographic areas. My job necessitated spending a lot of time outside in every sort of weather condition. The work was challenging, but I enjoyed it tremendously and looked forward to moving up in my career.

### The Onset of My Symptoms, Their Increasing Severity Over Time and Their Effect on My Work

6. When my symptoms originally appeared in [ ], they were occasional and aggravating. Mostly, I was annoyed because they slowed me down. Even if I was in pain or was fatigued, I would work through the episode; I didn't want anyone to know what was happening to me. Over the years, however, my symptoms steadily increased in both frequency and severity.

### Fatigue and Pain

7. Between the years [ ] and [ ], I began to frequently tire for no discernible reason. I felt drained and had trouble concentrating. Sometimes I was so tired that I would need to lay down at work or take an afternoon off. I tried my best to hide my condition from my co-workers though. I guess I was in denial myself.

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8. During this time period, I had a number of other medical problems that I attributed to stress, overwork and my physically active lifestyle. I had musculoskeletal problems, including wrist pain, finger numbness, back and heel pain and severe migraines.
9. In [ ], I went to see an orthopedist for my body aches and joint pain. Because of these symptoms and the severe fatigue from which I was suffering, he suggested that I be checked for [ ] disease.
10. In [ ], I started feeling tired constantly, and the fatigue seemed unrelated to how much sleep I was getting. Even if I slept eight and a half hours, I still would not feel well-rested. Because I was slowed down so much at work, I had to work longer days to get everything done, so this further compounded the problem.
11. I often was late for work in the morning, usually by an amount ranging from a few minutes to an hour. In fact, it was unusual for me to be at work on time due to my difficulties with falling asleep at night, poor sleep and trouble waking up in the morning. Also, mornings in general became increasingly difficult for me. I never felt rested upon getting up, and the grogginess that I felt upon rising would usually stay with me for most of the day.
12. I was fortunate to have bosses who were tolerant of my constant lateness. I usually worked late after everyone else had gone home to make up the missed time and catch up on work.
13. Upon returning home from work, I often didn't have the energy to even get out of my car. I was just relieved that I had made it through another tough day of work and back home without getting hurt. At these times,  
I would just sit in the car with my eyes closed, often for 15 minutes to a half hour, as I tried to summon the energy to go up the stairs into my house.
14. I also developed muscle aches every morning. Upon waking, I would experience muscle pain throughout my body, lasting at least half an hour. In addition, I had headaches and severe pain in my joints which would last the whole day. My joints began to make a lot of crunching and popping sounds.
15. I developed floaters in my vision and ringing in my ears. These sensory issues were especially scary, as my job required me to constantly be alert to what was happening on multiple levels of a building project simultaneously.

## **Cognitive Symptoms**

16. Around { }, I began noticing significant problems with my cognitive functioning. I developed a lot of problems concentrating, remembering things and processing complex tasks. I often felt confused. I felt like my mind, once fast-moving and nimble, was stuck in molasses.
17. Occasionally I would have mental lapses at work, forgetting facts or figures or things I was supposed to do. I tried to compensate for these mental lapses by constantly writing notes to remind myself of things.
18. I also worked late because of the concentration problems I was having. It was easier for me to stay focused after everyone else had left.
19. On many occasions throughout [ ] and [ ], when I was talking with [ ], my project manager (and direct supervisor), about one of our projects, he noticed that I had completely forgotten about recent conversations we had had. During one such instance, we were discussing a detail of the reinforcing steel in the electrical transformer building for which we were overseeing construction at [ ]. [ ] talked about a change in the steel detail that we had discussed the day before. He was surprised when I had no recollection of the previous day's conversation. After we talked about it for a few minutes, I began to have a vague recollection that we may have discussed it earlier, but I wasn't sure. [ ] then commented, as he often

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did at these times, that I seemed to be “losing it.” I didn’t say anything, but I couldn’t help wondering if he was right.

20. From about [ ], I was the project engineer for the construction of the [ ]. This project involved a number of different construction disciplines, including building construction, site work and drainage, electrical work, landscaping and computerized control systems. My job was to oversee and document the work as well as be the engineering firm’s full-time representative at the project site. Unfortunately, as the work progressed, I found that I was getting confused about the project. I couldn’t see how the various project components were going to fit together, and I had a very hard time planning the upcoming work.
21. Several months into the project, I found myself avoiding contact with the contractors and airport staff because I didn’t want them to realize how lost I was, which would have reflected badly on my company. Many times, I was in my project trailer, watching one of our electrical crews working in the distance on the airfield, wondering what they were doing, but not wanting to ask for fear of showing my confusion about the project.
22. Eventually, it reached a point where I stopped trying to manage the project and instead relied on the contractors to do all the planning and coordination that I was supposed to be doing. This was a bad situation since I was supposed to be supervising the contractors, but I was mentally unable to keep track of the multiple tasks going on, and I easily got confused about the next steps in the project. I had a particularly hard time with the electrical tasks that were at the heart of the project, even though I was familiar with electrical construction. The electrical contractor would explain to me what he was planning to do, but, at the end of our conversations, I often found myself unable to remember what we had just discussed.
23. I tried to at least keep accurate project records. However, I also had trouble in this area. I stayed late at the site for hours each day, struggling to remember and write down the day’s events. Still, I often missed things. Days after making a daily log entry, I would often find an invoice or memo proving that I had missed a significant project milestone such as a large concrete pour or the delivery of a major electrical component. My handwritten notes were riddled with cross-outs and scribbles in the margins, not only because I had trouble remembering what I needed to write, but also because I had difficulty with the actual act of writing. I often wrote the wrong words, misspelled things, left out letters, or put words in the wrong order.
24. It also became increasingly difficult for me to inspect the work in the field because of my deteriorating health and mental clarity. Much of the project involved working around excavations, scaffolds and heavy machinery. I sometimes became disoriented, distracted, or had dizzy spells, so I did not feel safe in these environments. I can recall several occasions when my project manager or one of the other people on the crew called my attention to a nearby truck that was backing toward me because I hadn’t noticed the beeping back-up alarm.
25. In [ ], I was working for a project manager named [ ]. My assignment was to develop a work scope and [ ] for the replacement of two non-functioning underground oil-water separators at [ ]. My duties on this project consisted mostly of office work plus several site visits. I had a very difficult time concentrating and staying focused on the task at hand. I would often find my mind wandering to other aspects of the job or to personal concerns, and I would then have to pull myself back and struggle to remember what I had just been working on. I also had trouble with typing the documents necessary for the project; I found that I made numerous errors while typing. I would inadvertently leave out letters, put spaces in the wrong locations, or type letters and words in the wrong order. I had to frequently go back and re-type a word or sentence two or three times before I got it right. The net result of these issues was that the assignment took me much longer that it should have. I did eventually finish, but Brett was shocked and disappointed that it had taken me three times as long as had been budgeted for my task. My company had to absorb the cost of my expended extra time because it could not be passed on to the client.

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26. In [ ], my company had assigned me to work on a disaster relief project in [ ]. Part of my job was to assess the scope and cost of damage to public facilities. I had one project that involved several damaged components of a dam and flood-control complex, upon which I had already been working for several weeks. My supervisor, [ ], explained how she wanted me to finalize the damage assessment report. The project was only moderately complicated, I was very familiar with it, and [ ] was a very clear communicator. Still, I kept finding myself losing track of her instructions as she was giving them to me. As I listened to each of her statements, I forgot the one that had just preceded it. I returned to my desk and furiously scribbled some notes as I struggled to recall what she had said. I worked on the project a little, but, over the next few hours, I returned three times to [ ]'s office to ask her about how to proceed. The first two times, she patiently answered my questions. By the third time, when I still couldn't grasp her directions, her concern was obvious. I admitted to her that I was having a hard time grasping this project, adding that I wasn't feeling well. She said not to worry about it, and she worked late that night herself to finish the report for me.

### Combination of Symptoms

27. In [ ], I had to go to [ ] for a day to supervise the factory acceptance test of the new computerized airfield lighting control system for which my firm was overseeing the installation at [ ]. I was supposed to pick up [ ] Control Manager, [ ], and bring her along to witness the test. (It was a drive of about two hours each way.) However, when I arrived in the morning to pick her up, I felt so groggy and exhausted that I asked [ ] if she would drive instead, which she did.
28. The factory acceptance test was a 5-hour technical session during which the computer system manufacturer demonstrated all the different modes of operation of the lighting control system, answering questions and noting problems along the way. I was supposed to be leading the discussion, but instead I spent the day hanging back in the group, struggling to stay awake and trying to give the appearance that I knew what was going on.
29. On the car ride home, when [ ] and I stopped for gas in New York, I wasn't paying attention and inadvertently locked us out of the car. We had to wait two hours for a tow truck driver to come and unlock it for us.
30. Sometimes I worried that my lack of physical stamina and/or the slowness of my mind would put me or others in danger. For example, I remember my boss assigning me to work as a [ ] on a night highway paving job at [ ] in [ ].
31. As usual, I was already tired and not feeling well, but I took a nap, made the 1-hour drive to the site and began my first night on the project.
32. My specific duties were to walk around the project site, directing the crew to correct any irregularities in the work, and to oversee the subcontractors performing quality-control testing on the new pavement. Floodlights were turned on as darkness fell. Dump trucks, pavement milling machines, loaders and asphalt trucks moved about between patches of total darkness and pools of light at the floodlit areas. I walked among these machines, a few times being caught by surprise as some of them backed toward me in the dark, the operators unable to see me.
33. I developed a severe headache, congestion and a sore throat from the cold air and nearly constant exposure to dust, asphalt fumes and diesel exhaust.
34. Because of all the noisy machinery and because of my sensitivity to loud noise, I had to wear earplugs, which, along with the darkness, made the experience even more disorienting for me. I felt spaced-out, almost as if I wasn't really there, and the earplugs made it even harder to hear what was going on around me on the site. I frequently found myself feeling disoriented and, several times, I lost track of my physical location on the site.

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35. Much of the work on the project took place along sections of the interstate highway that were still open to traffic. The work areas were separated from the open traffic lanes by a single row of orange traffic pylons. Cars regularly went by at 70 mph or more, often just a few feet away from where I was standing. At one point, when I was walking around the project, at around 2 a.m., I noticed that it was particularly dark and quiet where I was standing. Then I realized, with alarm, that I had wandered past the traffic pylons and into one of the open highway lanes. Fortunately, there was no traffic at the time.
36. Several times during the night, when I felt my absence would not be noticed, I went to my car and closed my eyes for 15-20 minutes to rest.
37. By the conclusion of the 13-hour shift I had worked that night, I felt so sick and exhausted, and had experienced so many near-misses; I knew that it would be extremely dangerous and unhealthy for me to continue this kind of work. It only would be a matter of time before I found myself in the wrong place at the wrong time and got myself or someone else killed.
38. The next morning, before I went to sleep, I called my district manager, [ ], and told him that I could not return to that project, as I felt that my health and safety were in danger due to my medical condition. He berated me, saying that I was throwing my career away, that he had health problems as well, and that he did not have any other projects for me to work on. He threatened to stop signing my timesheets if I would not comply with his wishes and return to the project. I told him that I could not and would not do so, because it was a serious health and safety issue for me. Finally, [ ] grudgingly admitted that he could not force me to go back to the night-paving project and suggested that I phone one of the other district managers to try to find myself work and save my job.
39. I did as he suggested and was able to secure a transfer to my company's office in [ ]. I was forced to take a pay cut, but at least I still had a steady job and medical benefits.

### **My Inability to Work After [ ]**

40. My job as a project engineer and construction inspector involved constant multitasking and interfacing, but I was no longer able to keep up at work, either physically or mentally. Despite the pain and fatigue I experience, I worked as long as I could. By [ ], however, my symptoms had advanced to such a point that I needed to take a break from work. I felt awful all the time, and I could no longer hide my symptoms.
41. Work had become very difficult for me. I had a hard time staying awake and concentrating, and I was no longer comfortable with driving long distances and working on construction sites as required by my job. My employer allowed me to take a two-month unpaid leave of absence.
42. I hoped that a leave of absence would allow me to rest and recharge my body and mind, so that I would be able to return to work rejuvenated. I spent most of my time resting, simply trying to recuperate. However, my symptoms not only did not abate, but they worsened.
43. By the end of the leave of absence, I was so ill that I knew I could not return to work. My leave of absence from work became a medical leave.
44. I consulted Dr. [ ] and his assistant, [ ], experts in the diagnosis and treatment of [ ], at [ ]. They prescribed antibiotic therapy, probiotics, sleep aids and herbal therapies in an effort to alleviate my symptoms, but none of these remedies yielded any significant improvements. I was still constantly plagued by pain and fatigue.
45. During this period, my overall condition stayed about the same, although some new symptoms appeared. I would have frequent dizzy spells upon standing up, occasional problems with balance and coordination, and jumbling of letters and words when writing.

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46. In [ ], I injured my right shoulder. I started physical therapy and it improved, albeit very slowly. A number of months later, in New York, my shoulder was still not fully recovered. Thus, I received a cortisone injection to speed up the healing process.
47. I experienced a severe adverse reaction to the cortisone shot that involved three days of intense joint and muscle pain, nausea, severe headaches, runny nose, sinus pain and a pink rash over much of my torso.
48. In [ ], I was terminated from my job due to my extended medical leave. I immediately applied for and began receiving disability benefits.
49. In [ ], under the treatment of [ ], I started the [ ] for [ ]. Dr. [ ] had had good results with other patients who had not responded to antibiotics, so I was hopeful. This treatment, too, failed to produce any significant improvements.
50. In [ ], [ ] terminated my long term disability benefits despite the fact that I was still disabled and, indeed, was more symptomatic than when I went out on disability initially.
51. That same month, [ ] referred me to Dr. X for neuro-cognitive evaluation and a SPECT scan in anticipation of placing me on a trial of intravenous antibiotics.
52. In [ ], because of continuing strength limitations and pain in my right shoulder, I visited an orthopedic specialist, Dr. [ ], who determined that I had a SLAP (superior labrum from anterior to posterior) tear at that location, resulting in reduced strength and pain.

### **My Constantly Debilitating Symptoms Prevent Me From Returning to Work**

53. I am tired all the time. I never feel fully awake and alert regardless of how much I have slept. I usually have a sensation of grogginess, as if I just got out of bed.
54. At home, I deal with my “brain fog,” that is, my grogginess and disorientation, as best I can. Sometimes the results can be disastrous though. For example, in [ ], I had an accident while using a chainsaw.
55. I had been using chainsaws since I was 18 and had a summer job as a construction laborer. I was always very handy with them, and I was exceptionally good at safely cutting down trees up to 2½ feet in diameter and getting them to land exactly where I wanted them to. The crew with which I worked quickly realized that I was good at safely dropping trees; so, when large trees had to be cut down, they often let me do it, even though I was the youngest person on the crew. I never sustained any injury other than minor bruises or scratches while working with a chainsaw. This was partly because I was able to mentally keep track of the tree and saw at all times.
56. As my health declined, this ability to multitask and concentrate suffered, becoming very apparent when I sustained a severe injury on [ ].
57. That day, I was using a chainsaw to cut down an 8-inch diameter maple tree next to my house. I had cut 2/3 of the way through the trunk when the tree began to come down. I quickly stopped cutting and held the still-running saw with one hand while I used the other to lean against the tree and push it away from the house as it fell. Although I was still holding the saw, I forgot to keep it away from my body. The still-spinning chain tore through my jeans and into my left lower leg, creating a 3-inch laceration that required a trip to the emergency room and 17 stitches. The tree ended up landing on my house—also a first for me.
58. That incident was my first wake-up call that it was dangerous for me to continue working around

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construction tools and heavy machinery. I simply am not alert and dexterous enough to do so because of my symptoms.

59. I usually experience dizziness when I stand up. The dizzy spells typically last from 5 to 20 seconds and are sometimes accompanied by impaired vision, impaired hearing and balance problems. It is difficult to remain standing during these spells. There is no way I could be walking around a construction site or climbing on scaffolding while experiencing this sort of dizziness.
60. I have constant headaches, which vary in type and severity, including ordinary headaches, sinus headaches and migraines. Depending on the severity of the headache, I may need to take pain relievers which make me even drowsier than usual or may even need to lie down in a dark, quiet room for a few hours. I would not be able to tolerate being on a noisy construction site. I certainly would be in no position to take or give direction during one of my more severe headaches.
61. I have a hard time grasping situations, understanding problems and staying focused on tasks or ideas. Situations that used to be very easy for me to grasp and evaluate now seem complicated and confusing. My thought process moves very slowly compared to the past, and I frequently lose my train of thought. My thoughts often seem jumbled, fragmented and unrelated to each other. I used to be very good with numbers; now I have a hard time processing mathematical ideas. I have trouble accurately reading and interpreting complex project plans or following blueprints, things which have to be done with 100% accuracy at my job.
62. My memory also has grown worse. For example, I forgot to pay my rent one month. Nothing like that had ever happened to me before. Also, I forget appointments, medical facts and things I did last month or last year. I recently forgot my own street address while filling out a form. I also went through a period of time where I could not recall my phone number. This type of memory blip could mean life or death when working in the construction industry.
63. I also experience constant problems with short-term memory. For example, I will forget to close the car door after I get out or forget names of people I just met. I occasionally have trouble remembering whether or not I took my medications and supplements. I frequently forget what I was doing or saying in the middle of doing or saying it. At work, I might not remember who I was talking with or what I was supposed to do.
64. I have muscle aches, joint pain and diminished strength, which interfere with my ability to perform many physical tasks. Lifting heavy objects (over 10 pounds)—something I would often have to do a few times a day at work—is out of the question for me.
65. I am usually able to drive limited distances for routine items like doctor visits, groceries and going to the post office. However, on days when my symptoms are worse, I sometimes have problems that make driving difficult, if not downright dangerous, for me. While driving, I have trouble staying alert, focused and attentive. I forget where I am going and sometimes do not recognize where I am driving, even on familiar roads. For example, last summer, I was driving north on Plains Road in Plattekill, New York, returning from a trip to the health food store. This is a very familiar road that I have driven hundreds of times for work and errands. Suddenly, while I was driving, I did not recognize where I was. I could not recall where I was going, why I was going there, or where I had come from. This lasted for about half a minute, after which I gradually recovered awareness of where I was and what I was doing.
66. I also have trouble staying awake while driving. In addition, sometimes, while driving, I have a sensation that someone else is driving the car, and I am just observing. I am more prone to bumping into things and having accidents since my balance and coordination have worsened. If I have to be at an appointment, but I am having a bad day, I get someone else to drive me.
67. While working, a few times a week I would have to drive to projects that were often two or three hours away. There is no way I could do this now. I am lucky if I can drive down the street safely.

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68. Verbal communication is sometimes challenging because I have trouble concentrating, remembering things and thinking clearly. Since my illness started, I hear ringing in my ears. I sometimes have difficulty speaking clearly. I might stutter or pronounce words out of sequence or with wrong suffixes. I often forget what I was going to say or forget the point I was trying to make. How can I give clear directions to workers on a construction site when this is happening?
69. Because of the thought processing difficulties I experience, I have great difficulty making even the simplest day- to-day decisions about what to wear for the day or what I am going to eat for dinner. Thus, it takes me take a tremendous amount of time just to accomplish the basic activities of daily living on an average day.
70. My disability has drastically curtailed my ability to participate in the activities that I used to enjoy; I no longer have the necessary physical energy or mental acuity. I had to stop swing dancing because I often could not remember the steps (even though I had been doing them for years). I used to ride my motorcycle every week, and sometimes daily. Recently, I sold it though because I could not use it anymore. I didn't think I could ride it safely. I used to be very involved in local grassroots issues and did volunteer work on a continuous basis. Now, I have little energy or focus to work on these issues.
71. All told, with my constant aches and pains, cognitive issues, dizzy spells, fatigue and headaches, I feel like an old person rather than a 38 year old man. While I used to pride myself on my intellect and physical fitness, it seems that my mind and my body simply do not work anymore. There is no way that I could return to work like this, much as I might want to.
72. It literally took me weeks to draft this affidavit to tell my story. I couldn't have done so without the help of my attorney.

\_\_\_\_\_

[ ]

Sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20XX

\_\_\_\_\_

Notary Public