EXAMINERS' ANALYSIS OF QUESTION NO. 15

With respect to the first question, to be eligible for worker's compensation benefits a person must be an "employee," as opposed to an independent contractor, because only "employees" can receive worker's compensation benefits. MCL 418.301(1); MCL 418.161(1). The test for determining whether a person is an "employee" is "the 20-factor test announced by the internal revenue service of the United States department of treasury." MCL 418.161(1)(n) (second sentence). This test is, in large part, a test whether sufficient control is present to establish an employer-employee relationship. This test for determining who is and who is not an employee applies to injuries "(o)n or after January 1, 2013." *Id.* Prior to that date other tests applied. The change in the law occurred approximately 2½ years ago, with the passage of 2011 PA 266. Because the test considers 20 factors, examinees are not asked to apply the test, just demonstrate that they know what the governing test is.

With respect to the second question, Derek's injury clearly arose "in the course of" his employment, MCL 418.301(1). The question is designed to test whether the examinee knows that such cases involving degenerative arthritis also require consideration of the more demanding "significant" contribution standard recited in MCL 418.301(2). See generally, *Farrington v Total Petroleum, Inc,* 442 Mich 201, 216-217 (1993), and *Lombardi v Beaumont Hospital (On Remand),* 199 Mich App 428, 435-436 (1993) (for discussions of "significant manner" test). The general rule is that, because employers take employees as they are, *any* contribution by work toward an injury renders the resultant condition entirely work related. See, *Riddle v Broad Crane Engineering Co,* 53 Mich App 257, 260-261 (1974). But, for certain enumerated conditions *any* contribution does not suffice; rather the employee must prove there was *significant* contribution from the workplace. MCL 418.301(2) lists the conditions requiring the heightened "significant manner" standard, saying in pertinent part: "Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner." Application of the

"significant manner" test requires a comparative analysis of work and non-work related explanations for the resultant condition. *Farrington*, 442 Mich at 216-217; *Lombardi*, 199 Mich App at 435-436.

Under the sparse facts given, work likely did contribute "in a significant manner" to Derek's knee problem, but the ultimate answer is not as important as demonstrating awareness of the "significant manner" standard and offering some comparative analysis. In responding to this question, some examinees may mention the necessity of Derek also proving that the work incident caused a new problem (torn meniscus) that is "medically distinguishable" from his prior degenerative condition. *Rakestraw v Gen Dynamics Land Sys Inc*, 469 Mich 220, 234 (2003). That observation is correct, but it is a given under the facts (*i.e.*, a torn meniscus is medically distinguishable from a degenerative knee condition). The employee must still meet the "significant manner" standard for the condition to be compensable. See, e.g., *Hill v DaimlerChysler Corp,* 2008 ACO #238; *Carrigan v DaimlerChrysler Corp,* 2000 ACO #51.

Finally, with respect to the third question, MCL 418.354(1) prevents Derek from "double dipping," such that any weekly worker's compensation benefits Derek might receive will be coordinated with Overland's disability insurance payments so as to reduce Derek's weekly worker's compensation benefits for the same weeks he receives the other employer-provided benefit.