

EXAMINERS' ANALYSIS OF QUESTION NO. 14

This question tests the examinee's knowledge of statutory procedures and practices in litigated workers' compensation cases.

1. With respect to the first question, the information requested by Data Entry Inc. (DEI)'s attorney is discoverable. The workers' compensation statute provides: "In satisfying its burden of production of evidence, the employer has a right to discovery if necessary for the employer to sustain its burden and present a meaningful defense." MCL 418.301(6). See also, *Stokes v Chrysler LLC*, 481 Mich 266, 298(2008) ("The employer is entitled to discovery before the hearing to enable the employer to meet this production burden."). The information requested by DEI is necessary for it to "sustain its burden and present a meaningful defense." The disability determination will turn on whether Charlotte is "unable to perform all jobs paying the maximum wages in work suitable to that employee's qualifications and training, which includes work that may be performed using the employee's transferable work skills." MCL 418.301(4)(a). This inquiry necessarily requires the need to "[d]isclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of injury." MCL 418.301(5)(a). Such information is needed to define the full scope of "all jobs" suitable to Charlotte's qualifications and training so as to allow proper determination of whether she is disabled. The Michigan's Workers' Compensation Agency in fact provides a form employers can elect to use to elicit such information pretrial. (Form 105A).

2. With respect to the second question, Charlotte will have the initial burden of proof on disability. MCL 418.301(5) and (6); see also, MCL 418.851; *Stokes*, *supra* at 297-298. The statute says: "Once an employee establishes an initial showing of a disability under subsection (5), the employer bears the burden of production of evidence to refute the employee's showing." MCL 418.301(6) (emphasis added). The fact that DEI voluntarily paid Charlotte disability benefits in the past does not switch the initial burden of proof to DEI because voluntary payment is not "considered as a determination of the rights of

the parties . . ." MCL 418.831. See, *Stefanik v Great Atlantic & Pacific Tea Co, Inc*, 125 Mich App 160, 162-163 (1983). In this way, the statute is designed to encourage swift and easy payments following a work injury.

3. With respect to the third question, a settlement is subject to approval (or rejection) by a trial magistrate. Settlements in workers' compensation are called redemptions. MCL 418.835(1). "All redemption agreements . . . filed under the provisions of section 835 shall be approved or rejected by a worker's compensation magistrate." MCL 418.837(1). A magistrate approves or rejects a redemption after not only considering its fairness, but after ensuring certain statutory factors have been satisfied, MCL 418.836(1)-(4), usually following a hearing on the propriety of the redemption. MCL 418.836(2).