

EXAMINER'S ANALYSIS OF QUESTION NO. 13

With respect to the first question, unlike some states, Michigan recognizes and allows recovery for workers' compensation claims based on mental injuries where is no physical injury, no physical problem, and no physical trauma. *Carter v General Motors Corp*, 361 Mich 577, 586 (1960); see also, *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 741 (2002). This has been a hallmark of Michigan workers' compensation law for some time. *Carter*, *supra*. Michigan has a specific statute addressing mental disabilities and, in keeping with Michigan's tradition on this point, there is no requirement a mental injury claim be dependent on or accompanied by physical trauma or physical injury. MCL 418.301(2).¹

Discussion of the possible success of Emily's claim is beyond the scope of the question. The correct answer is Emily can file and pursue compensation for treatment of her mental problem under Michigan workers' compensation law.

With respect to the second question, workers' compensation is the exclusive remedy available to employees for work related injuries. There is, however, one exception: an action for an intentional tort, with intentional tort being defined specifically and narrowly in the workers' compensation statute. The relevant statute says:

"The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall

¹ "Mental disabilities and conditions of the aging process...are compensable if contributed to or aggravated by or accelerated by the employment in a significant manner. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality." See also, MCL 418.301(1).

not enlarge or reduce rights under the law." MCL 418.131(1).

Case law explains the intentional tort exception means an employee must prove the injury was a result of the employer's deliberate act or omission and that the employer specifically intended an injury. *Travis v Dreis & Krump Manufacturing Co*, 453 Mich 149, 169-180 (1996) (Opinion by BOYLE, J.). An employee must show "the employer . . . made a conscious choice to injure an employee and . . . deliberately acted or failed to act in furtherance of that intent." *Id.* at 180. There are two ways to show an employer specifically intended an injury: direct evidence the employer "had the particular purpose of inflicting injury" or alternatively circumstantial evidence the employer "has actual knowledge that an injury is certain to occur, yet disregards that knowledge." *Id.* at 172-173, 180. An employer's "knowledge of general risks is insufficient to establish an intentional tort." *Herman v City of Detroit*, 261 Mich App 141, 149 (2004). Merely showing that injury is likely to occur is insufficient to prove it was certain to occur. *Id.*; *Bagby v Detroit Edison Co*, 308 Mich App 488, 496 (2014).

Emily would have a difficult time meeting this high threshold. She could argue ABC deliberately failed to act in response to her warnings and complaints, but the facts suggest ABC's motivation was to increase profits as opposed to deliberately injure her. Emily would also have some difficulty proving by her injury was certain to occur, as opposed to being merely likely to occur.

Result aside, the primary purpose of the question is to ascertain the examinee's awareness of the exclusive remedy provision and awareness of the high threshold of the intentional tort exception.