

EXAMINERS' ANALYSIS OF QUESTION NO. 13

With respect to the first question, Michigan law permits a person to receive both old age social security benefits and weekly workers' compensation for the same periods of time. MCL 418.354(1). That is, the receipt of the social security benefits will not preclude receipt of weekly workers' compensation benefits. *Id.* See generally, *Franks v White Pine Copper Division*, 422 Mich 636 (1985). Melissa's receipt of the social security benefits from YMO will, however, have an effect on the amount of weekly workers' compensation benefits she might receive. Any weekly workers' compensation benefits will be coordinated with her social security benefits under MCL 418.354(1)(a). Specifically, any obligation of YMO to pay weekly compensation benefits will be reduced by fifty percent of the amount of old age social security benefits. MCL 418.354(1)(a).

The examinee is expected to know that receipt of old age social security benefits does not preclude Melissa from also receiving weekly workers' compensation benefits. She can receive both benefits. The examinee is also expected to know that there is, however, an offset between the two benefits.

With respect to the second question (which is given more weight in scoring than the first), Melissa's ability to continue working at available lesser paying supervisory jobs will have an effect on any claim for weekly wage loss benefits. MCL 418.3091(4)(a) and (8). It will mean that any disability is, at most, partial; she will therefore be limited to, at most, partial disability benefits. "A disability is partial if the employee retains a wage earning capacity at a pay level less than his or her maximum wages in work suitable to his or her qualifications and training." MCL 418.301(4)(A). See also, MCL 418.301(4)(b) and MCL 418.301(9); *Lofton v Autozone, Inc*, 482 Mich 1005 (2008). And, the term "wage earning capacity" means "the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned." MCL 418.301(4)(b). The facts say that Melissa retains the ability to earn, at least, the lesser wages payable at available non-typing supervisory positions in her locale. If Melissa showed interest in procuring such work and had made an unsuccessful good faith effort to obtain such work, then she would be entitled to total disability benefits because: "a partially disabled employee who establishes a good-faith effort to procure work but cannot obtain work within his or her wage earning capacity is entitled to weekly benefits . . .

as if totally disabled." MCL 418.301(8).

The examinee is not expected to, but may undertake a more extensive analysis of "disability" and "wage loss" requirements under Michigan workers' compensation law. MCL 418.301(4)-(7); see also, *Stokes v Chrysler LLC*, 481 Mich 266 (2008) and *Sington v Chrysler Corp*, 467 Mich 144 (2002) [regarding "disability"] and *Sington and Lofton*, both *supra*; *Romero v Burt Moeke Hardwoods, Inc*, 280 Mich App 1 (2008) [regarding "wage loss"]. As part of any such discussion of whether there is any "disability" at all, the examinee might point out that Melissa may not be entitled to any weekly benefits unless she is prepared to demonstrate that all maximum paying jobs suitable to her qualifications and training--taking into consideration her transferrable skills--are now foreclosed by her carpal tunnel syndrome. *Stokes, supra*; MCL 418.301(4)(a) (second sentence) ["A limitation of wage earning capacity occurs only if a personal injury covered under this act results in the employee's being 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."]. Melissa's inability to do her job at YMO does not necessarily mean she is "disabled." *Stokes* and *Sington, supra*. And finally, in discussing the "wage loss" requirement, an examinee may discuss whether Melissa's decision to separate from her employment precludes Melissa from receiving any weekly wage loss on the basis that she chose to exit the labor force by leaving YMO. *Sington* and *Romero, supra*. The examination question is deliberately designed, however, to not solicit exploration of this subject matter, as opposed to the partial disability question. But, recognition of these contextual and latent issues should not be penalized but considered favorably.