

EXAMINERS' ANALYSIS OF QUESTION NO. 13

With respect to the first question, the answer is yes: ABC can terminate payment of weekly workers' compensation without first receiving permission from the state workers' compensation system. Unlike some other states, in Michigan voluntary payment of workers' compensation is not a determination of liability or coverage; it does not bind the employer. *Gilbert v Reynolds Metals Co*, 59 Mich App 62, 68 (1975). Nor does it bind the employee (the employee may, for example, accept workers' compensation and later sue for an intentional tort). The relevant statute is MCL 418.831, which says: "Neither the payment of compensation or the accepting of the same by the employee or his dependents shall be considered as a determination of the rights of the parties under this act." This provision has the effect of encouraging swift and easy payments of benefits in borderline cases because the decision to pay or accept payments is not binding. Therefore, ABC need not seek preapproval from the state before terminating voluntary payment of Bob's workers' compensation benefits. (If ABC had been ordered to pay Bob workers' compensation benefits following a hearing, the result would be different. ABC would need to obtain another order from the workers' compensation agency relieving it of further payments. See, Workers' Compensation Agency: General Rules, Rule 10[1], R 408.40; See also, *Brown v Dept of Social Services*, 127 Mich App 234, 237-38 [1983].)

With respect to the second question, ABC's payment of a partial rate was appropriate. The workers' compensation statute says: "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). "(W)age 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) (*italics added*). Here, Bob retained the ability to earn at a reduced pay level (one-half of his typical average weekly wage) at work suitable to his qualifications and training. The fact he was not actually earning those lesser wages is not determinative. What is determinative is what he is capable of earning. Compare, *Lofton v AutoZone, Inc*, 482 Mich 1005 (2008). A possibility

exists under the statute for Bob to receive higher weekly compensation benefits "as if totally disabled," but Bob would need to establish "a good-faith effort to procure work" within his limitations and here he sought none. MCL 418.301 (4) (c).

With respect to the third question, nothing in Michigan's workers' compensation statute compels an employer to offer an injured employee a job. While that is often done to mitigate workers' compensation liability and because other statutes might require accommodating employees, the workers' compensation statute does not mandate a job offer.