

ANSWER TO QUESTION NO. 9

There are two issues that should be identified and discussed, in no particular order. First, there is the issue of whether John's back condition is work related for workers' compensation purposes. The second issue is whether John can prove that he is "disabled" and thus entitled to weekly wage loss benefits under 418.301(4), as recently informed by the Michigan Supreme Court's decision in *Stokes v Chrysler LLC*, 481 Mich 266 (2008).

With respect to the work relatedness issue, the fact that John brought to the workplace a pre-existing condition does not preclude a finding that his back condition is work related. Where work aggravates a pre-existing condition in a compensable manner, the resultant problem is deemed wholly work related for workers' compensation purposes. *E.g.*, *Smith v Lawrence Banking Company*, 370 Mich 169 (1963). Aggravation of a pre-existing condition in a compensable manner requires the claimant to demonstrate more than just aggravation of the symptoms of the preexisting condition. The claimant must demonstrate that work aggravation produced a problem "medically distinguishable" from the pre-existing problem. *Rakestraw v General Dynamics Land Systems*, 469 Mich 220 (2003). A medically distinguishable problem occurs where there has been a "change in the pathology" of the condition. *Fahr v General Motors*, 478 Mich 922 (2007). Furthermore, if the pre-existing condition is a "condition of the aging process", i.e., a condition that naturally progresses with the passage of time, the claimant must demonstrate that work contributed toward the pre-existing problem "in a significant manner", rather than only insignificantly. MCL 418.301(2); MCL 418.401(2) (b).

Therefore, in addressing the work relatedness issue in John's case, the examinee must demonstrate that he or she is aware of the need to prove a "medically distinguishable" problem, a "change in pathology." And, a thorough analysis would also include consideration of the possibility that John's arthritis might be deemed a "condition of the aging process" requiring "significant" work contribution. The type of information an attorney will need to elicit in order to properly evaluate John's claim will include prior medical records to determine whether John's problem is a condition of the aging process and current medical information designed to answer the question of whether John has a problem "medically distinguishable" from his pre-existing condition. The attorney would also want to know the frequency of John's bending at work to determine the significance of work's contribution and whether John suffered any specific traumatic events at work.

With respect to the second "disability" issue, the *Stokes*

decision requires the claimant to present proofs on four different elements in order to make a *prima facie* case of disability and thereby successfully pursue weekly wage loss benefits. First, the claimant is required to fully disclose all of his qualifications and training, including education, skills, experience, and training "whether or not they are relevant to the job the claimant was performing at the time of injury." Second, the claimant needs to provide a reasonable means to assess employment opportunities at all such suitable jobs within the same salary range, including the jobs to which his or her qualifications and training might "translate." The claimant must not limit consideration to just the jobs that he has actually performed in his work life. Third, the claimant must demonstrate the work injury prevents him from performing some or all of such jobs. And, fourth, if there are any jobs suitable to his qualifications and training he is capable of performing post-injury, he must show that he has made a "good faith attempt to procure post-injury employment if there are jobs at the same salary or higher."

Therefore, with respect to the second issue, the examinee should display familiarity with this legal standard of disability articulated in *Stokes* which built on *Sington v Chrysler Corp*, 467 Mich 144 (2002). John's attorney will need to elicit from John information regarding his skills, experience, training, hobbies and the like, in addition to all the specific jobs he had previously performed. *Stokes* mentions, though it does not mandate, that claimants like John consider producing vocational testimony and a "transferable skills analysis" in order to establish how his qualifications and training might translate to other jobs beyond those he had previously performed. Finally, John's efforts to procure suitable post-injury work within his physical restrictions are important.

In sum, to prevail with a workers' compensation claim for weekly wage loss benefits, John needs to demonstrate his condition is work related and he must satisfy the *Stokes* "disability" criteria. John ostensibly has a claim, but whether it is meritorious and warrants pursuit will depend on the results of the inquiries identified above. The examinee must demonstrate he/she recognizes these two issues, knows the crucial legal criteria, and knows what information will need to be collected in order to properly evaluate the case.