EXAMINERS' ANALYSIS OF QUESTION NO. 15

With respect to the first question, Patrick's injury crossing the street leaving the employer parking lot is covered by Michigan's workers' compensation statute. While as a general rule injuries sustained going to or coming from work are not covered, the most prominent exception is the one presented here. *Simkins v GMC,* 453 Mich 703, 712 (1996). Michigan courts have consistently held that injuries sustained crossing a public street on the way to the workplace are work-related for workers' compensation purposes so long as the employee is traversing directly from an *employer* owned, leased, or maintained parking lot to the workplace. *Simkins, supra* at 722-26; *Smith v Greenville Products Co (On Remand),* 185 Mich App 512 (1990); *Jean v Chrysler Corp,* 2 Mich App 564 (1966). The rationale is that the employer has, in effect, created a necessary path between two parts of its premises and must, therefore, assume some responsibility over the area it anticipates its employees will travel. *Simkins, supra* at 722-24. An examinee might also note: "An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment." MCL 418.301(3) (first sentence). For these reasons, Patrick's injury is one considered to be "arising out of and in the course of employment." MCL 418.301(1).

The result would be different if Patrick were traversing from a private, non-employer parking area to the workplace. *Beneteau v Detroit Free Press,* 117 Mich App 253 (1982). And, an exceptional examinee would note that Patrick's possible fault in being struck by the car (his "neglect" in noticing the car) does not bar recovery. Workers' compensation is a no-fault system. MCL 418.141(a); *Nemeth v Michigan Building Components,* 390 Mich 734, 737 (1973).

With respect to the second question, there are workers' compensation ramifications flowing from Patrick's termination due to his post-injury conduct. He would not be entitled to weekly wage loss benefits.

An employer can extend to an injured employee "a bona fide offer of reasonable employment" in order to mitigate its liability for wage loss benefits. MCL 418. 301 (9)(a). "Reasonable employment," once called "favored work," is statutorily defined; it is work an injured employee is able to perform in a disabled state. See, MCL 418.301 (11);

compare, *Bower v Whitehall Leather Co,* 412 Mich 172 (1981). Absent a good and reasonable reason to refuse the job, the injured employee is obliged to accept the offer or sacrifice his/her right to weekly wage loss benefits. MCL 418.301(9)(a). If the employee is laboring at such "reasonable employment" and later "is terminated...for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits…" MCL 418.301(9)(b).

Here, ABC offered Patrick "reasonable employment" and Patrick accepted it. The post-injury work by every indication was within his capacity to perform (and met all other "reasonable employment" requirements). Patrick simply did not like the job and was terminated "for fault," *i.e.,* excessive tardiness and absences in contravention of a company policy of which he was aware. Therefore, Patrick would be considered to have voluntarily removed himself from the work force and "not entitled to any wage loss benefits." (He would still receive medical benefits related to his injury).

Prior to December 11, 2011, the law on this point was different. At that time, an employee terminated "for whatever reason" within the first 100 weeks of "reasonable employment" was still entitled to receive compensation. MCL 418. 301(5) (as it read prior to 2011 PA 266).

The second question does not invite a disability/wage loss analysis under MCL 418.301(4)-(8), but if an examinee undertakes one accurately, some consideration of such will be given in grading.