

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 01-119113

Employee: James M. Wilson (Deceased)
Dependents: Nora Alice Escobedo and Robin Kay Vidiro
Employer: Freeman Baker
Insurer: Ward North America, Inc.
Date of Accident: June 2, 2001
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the associate administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the associate administrative law judge dated September 13, 2004, and awards no compensation in the above-captioned case.

The award and decision of Associate Administrative Law Judge L. Timothy Wilson, issued September 13, 2004, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 13th day of July 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: James M. Wilson (Deceased)

Injury No. 01-119113

Claimants: Nora Alice Escobedo
and Robin Kay Vidiro

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Employer: Freeman Baker

Additional Party:N/A

Insurer: Ward North America, Inc.

Hearing Date: May 10, 2004

Checked by: LTW/mp

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? no
2. Was the injury or occupational disease compensable under Chapter 287? no
3. Was there an accident or incident of occupational disease under the Law? no
4. Date of accident or onset of occupational disease: alleged June 2, 2001
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
yes
7. Did employer receive proper notice? yes
8. Did accident or occupational disease arise out of and in the course of the employment? no
9. Was claim for compensation filed within time required by Law? yes
10. Was employer insured by above insurer? yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimants allege that employee suffered a heart attack as a delayed result of a motor vehicle accident that he was involved in while performing his truck-driving duties.
12. Did accident or occupational disease cause death? no Date of death? August 3, 2001
13. Part(s) of body injured by accident or occupational disease: fatal
14. Nature and extent of any permanent disability:
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages: \$291.14
19. Weekly compensation rate: \$194.10
20. Method wages computation: stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

The claim for compensation is denied.

22. Second Injury Fund liability: No

TOTAL: \$. 00

23. Future requirements awarded: none

FINDINGS OF FACT and RULINGS OF LAW:

Employee: James M. Wilson (Deceased)

Injury No: 01-119113

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents: Alleged Nora Alice Escobedo and Robin Kay Vidiro

Employer: Freeman Baker

Additional Party N/A

Insurer: Ward North America, Inc.

Checked by: LTW/mp

The above-referenced workers' compensation claim was heard before the undersigned Associate Administrative Law Judge on May 10, 2004. The record was left open for the submission of additional evidence; and the parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about August 9, 2004.

The claimants, Robin Vidiro and Nora Escobedo, appeared personally and through their attorney, Randy Alberhasky, Esq. The claimant, Robin Vidiro, seeks payment of funeral expenses. The claimant, Nora Escobedo, seeks payment of

temporary total disability compensation, funeral expenses, and death benefit compensation. The employer and insurer appeared through their attorney, Clifford K. Stubbs, Esq.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about June 2, 2001, Freeman Baker was an employer operating under and subject to The Missouri Workers' Compensation Law and during this time was fully insured by Ward North America, Inc.
- (2) On the alleged injury date of June 2, 2001, James A. Wilson was an employee of the employer and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged accident of June 2, 2001, occurred in St. Louis County, Missouri. The parties, however, agree to venue lying in West Plains, Missouri. Venue is proper.
- (4) The employer received notice of the employee's claim of injury as required by Section, 287.420, RSMo.
- (5) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (6) At the time of the alleged accident, the employee's average weekly wage was \$291.14, which is sufficient to allow a compensation rate of \$194.10 for both temporary and permanent disability compensation.

The sole issues to be resolved by hearing include:

- (1) Whether the employee sustained an accident on June 2, 2001; and, if so, whether the accident arose out of and in the course of his employment with Freeman Baker?
- (2) Whether the alleged accident of June 2, 2001, caused the employee to suffer injuries and disabilities, including subsequent death, for which benefits are now being claimed?
- (3) Whether the employer and insurer are obligated to pay for funeral expenses in the amount of \$1,206.65?
- (4) Whether the employee had any dependents under Chapter 287, RSMo on or about June 2, 2001, and at the time of his death? (This issue includes consideration of whether the claimant, Nora Escobedo, is a dependent of the deceased employee under Chapter 287, RSMo and is entitled to benefits under Chapter 287, RSMo.)
- (5) Whether the claimant Nora Escobedo is entitled to temporary disability compensation? (The claimant seeks nine weeks of temporary total disability compensation, payable for the period of June 3, 2001, to August 3, 2001.)
- (6) Whether the claimant Nora Escobedo is entitled to death benefit compensation?

EVIDENCE PRESENTED

The claimants, Nora Escobedo and Robin Vidiro, testified at the hearing in support of their claim. Also, the claimants presented at the hearing of this case the testimony of Ella Yardley. In addition, the claimants offered for admission the following exhibits:

- Exhibit A . Medical Records from Shannon County Medical Clinic
- Exhibit B Physical Examination Certificate
- Exhibit C Medical Records from St. Francis Medical Center
- Exhibit D . Medical Records from Shannon County Medical Clinic
- Exhibit E Medical Records from Ozark Medical Center
- Exhibit F Medical Records from St. John's Regional Health Center
- Exhibit G Medical Records from St. Francis Medical Center
- Exhibit H Medical Records from St. John's Regional Health Center
- Exhibit I Deposition of Dr. Diana Koenig
- Exhibit J Deposition of Mary Mart

Exhibit K Personnel File of James Wilson from National Transportation (maintained by Joe Morrison)
 Exhibit L Assignment of Proceeds of Insurance
 Exhibit M Life Insurance Policy for James Wilson (issued by New York Life)
 Exhibit N Certificate of Death of James Wilson
 Exhibit O 1999 and 2000 Personal Property Tax Receipts for Wilson, James & Nora
 Exhibit P Marriage License and Dissolution of Marriage Decree B/T Nora Alice Yardley & Doyle Rowland; Marriage License and Dissolution of Marriage Decree B/T Nora Alice Escobedo and Nickey Pruitt Hedges; Marriage License and Dissolution of Marriage Decree B/T Nora Alice Chavez & John Escobedo.
 Exhibit Q Duncan Funeral Home Invoice
 Exhibit R Copy of Valentine Card
 Exhibit S Copy of Envelope
 Exhibit T Letter Dated October 1, 2003

The exhibits were received and admitted into evidence.

The employer and insurer did not present any witnesses at the hearing of this case. The employer and insurer, however, offered for admission the following exhibits:

Exhibit 1 Property Tax & Social Security Records
 Exhibit 2 Medical Report of Michael W. Farrar, M.D.
 Exhibit 3 Deposition of Michael W. Farrar, M.D. (with attachments)

Exhibits 1 and 2 were received and admitted into evidence at the hearing. Exhibit 3 was received and admitted into evidence subsequent to the hearing.^[1]

In addition, the parties identified several documents filed with the Division of Workers' Compensation which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include: Notice of Hearing; Stipulation of Wage Rate (submitted June 14, 2004); Answer of Employer and Insurer to Amended Claim for Compensation; Amended Claim for Compensation; Answer of Employer & Insurer to Claim for Compensation; and Claim for Compensation.

PRELIMINARY STATEMENT

In this case two claimants seek death benefits compensation pursuant to a claim that the employee, James Wilson, sustained a motor vehicle accident on June 2, 2001, which arose out of and in the course of his employment with Freeman Baker. Notably, this claim alleges that this motor vehicle was a substantial factor in the cause of Mr. Wilson's heart attack, which occurred approximately 36 hours later on June 3, 2001, while being off duty and situated in a motel room; and this heart attack caused Mr. Wilson's death, which occurred nearly 3 months later.

Also, in addressing the issues presented in the case, consideration of the issues include whether the claimant Nora Escobedo is a dependent of the deceased employee, James Wilson. In asserting this claim, Ms. Escobedo acknowledges that she does not meet the definition of dependent as defined in Section 287.240.4, RSMo, but asserts she is legally entitled to be recognized as a dependent insofar she and the deceased employee enjoyed a relationship in the nature of a common-law marriage.

DISCUSSION

I.

Claim of Accident / Injury

James M. Wilson was an employee of Freeman Baker of Birch Tree, Missouri. Mr. Wilson was involved in an accident on June 2, 2001, at approximately 1:30 p.m. on I-70 East at Cypress in St. Louis in a construction zone. The tractor-trailer Mr. Wilson was driving struck an automobile in the rear-end, which was being driven by Janet Maddez-

Kreutz. A passenger in the automobile, Mary Mart, testified in her deposition that Mr. Wilson checked on her and the children in the back seat and attempted to joke around with them in order to make light of the situation. Additionally, Ms. Mart provided conflicting testimony relative to Mr. Wilson's physical appearance, offering both that he "seemed to be O.K." and "seemed to be alright" and then that he was "really upset."

After the accident, Mr. Wilson climbed in and out of his trailer to give information to the police officer and then delivered his load and drove as usual. According to the driver's log, Mr. Wilson dealt with the accident from approximately 1:30 p.m. until 3:00 p.m.; and then he drove for thirty minutes to deliver his load. Then from 3:30 p.m. until 5:00 p.m., he was off duty; and from 5:00 p.m. to 7:00 p.m., he drove back to Jackson, Missouri. A hand-written note in the Safety file indicates that he drove to Jackson where he stayed at a Drury Suites by Exit 105. Mr. Wilson stayed there for the remainder of the evening of June 2d and through the entire next day of June 3d until approximately 12:00 a.m. of June 4, 2001. Thus, Mr. Wilson stayed in the Drury Suites a day and a half in Jackson, Missouri, when his home in Winona was only approximately 150 miles away. There is no indication in the record as to why Mr. Wilson stayed at the motel so close to his home.

During the late evening of June 3, 2001, or early morning of June 4, 2001, Mr. Wilson went into cardiac arrest. An ambulance was called and arrived around 1:00 a.m. Shortly thereafter, Mr. Wilson presented to the emergency room of St. Francis Medical Center in Cape Girardeau, Missouri. According to Dr. Talbert's notes, Mr. Wilson had an onset of chest pain about 10:00 p.m. on June 3, 2001. According to Dr. Farrar, this event lasted two to three hours, followed by dyspnea, cyanosis, and respiratory failure.

On June 8, 2001, Mr. Wilson underwent coronary artery bypass graft surgery. During this hospitalization Mr. Wilson received additional treatment for respiratory failure and chronic obstructive pulmonary disease. Following a prolonged period of hospitalization on June 25, 2001, Mr. Wilson received a discharge and returned to his home in Winona. Unfortunately, Mr. Wilson suffered deteriorating health during the subsequent months, experiencing difficulty breathing and sleeping.

Mr. Wilson continued to live and stay at home until August 3, 2001, when he began experiencing shortness of breath and feeling extremely weak. This deteriorating change in condition resulted in Ms. Escobedo calling an ambulance and Mr. Wilson being flown to Ozark Medical Center, intubated. At the time of his arrival and admission into the emergency room of Ozark Medical Center, the attending physician noted that Mr. Wilson had no blood pressure and was unresponsive. Additionally, the attending physician, A.K. George, M.D., notes that Mr. Wilson presented with "clinical features of multiorgan failure" and "clinical features consistent with severe metabolic acidosis, possibly from severe hypotension/low cardiac output." Mr. Wilson remained unresponsive throughout the hospital course and died on the same date of his admission, August 3, 2001.

The final diagnosis pertaining to Mr. Wilson, as given by Dr. George, is as follows: (1) cardiomyopathy with severe left ventricular dysfunction; (2) multiorgan failure; (3) chronic obstructive pulmonary disease / moderately severe mitral regurgitation; (4) hypokalemia; (5) anemia; (6) metabolic acidosis, secondary to multiorgan failure; and (7) atherosclerotic heart disease, recent coronary bypass surgery.

Diana L. Koenig, D.O., who is a physician practicing in the specialty of family medicine, testified on behalf of the claimants through the submission of a medical report dated November 1, 2002, and through the taking of her deposition on December 13, 2002. As a family physician providing services near Mr. Wilson's home, Dr. Koenig became the personal physician of Mr. Wilson and began treating him on July 25, 2001, for the purpose of providing him with follow-up care. At the time of this examination, Dr. Koenig took a history from Mr. Wilson, reviewed various medical records, and performed a physical examination of him relative to providing follow-up care, primarily for his congestive heart failure. Notably, at the time of her examination of Mr. Wilson on July 25, 2001, Dr. Koenig identified Mr. Wilson to be "very weak, thin, underweight." Additionally, Dr. Koenig noted that Mr. Wilson could walk, "but he was tottery, he wasn't very steady on his feet."

Subsequent to Mr. Wilson dying, Dr. Koenig propounded a medical report dated November 1, 2002, wherein she offered an opinion of medical causation premised on her understanding of Mr. Wilson's medical condition at and near the time of his death, and her understanding of the motor vehicle accident of June 2, 2001, and the subsequent hospitalization.

This understanding is set forth in her report, which she propounds as follows:

James M. Wilson had a heart attack (MI) which was diagnosed on 06-03-01. His MI was precipitated by a relatively minor accident that he had while driving a commercial truck on 06-02-01 at 1:58 p.m. in St. Louis, MO. Mr. Wilson had felt fine prior to the accident which he said occurred when someone pulled out in front of him and he was unable to avoid rear-ending their vehicle. After he filed the accident report and got back in his truck, he developed nausea, cold sweats and mild chest pain. He had no recall of anything after that, until the ambulance came to pick him up at a hotel in Jackson, MO, on 06-03-01. During the time he could not recall, he drove to Ellisville, MO, dropped off the load he was transporting, drove to Jackson, MO and checked into the motel. He called the desk clerk for help because his chest pain was worse and the nitroglycerin tablets he tried were not helping. (The bottle had expired two years ago, since he had not had to use the nitroglycerin since it was prescribed.) The desk clerk called the ambulance for him.

When he arrived at St. Francis emergency room he was in “fulminant pulmonary edema, near death, (and) required intubation.” He “presented late” to the emergency room, meaning that some time had elapsed since he initially had the MI. He had triple bypass surgery on 06-04-01. He had multiple complications from the lack of oxygen to his brain prior to arriving at the emergency room and from undergoing surgery. Since the MI he had memory problems, mood and personality changes consistent with brain damage secondary to lack of oxygen, weakness and shortness of breath from congestive heart failure caused by damage to the heart from the MI itself, and his left lung collapsed on 6-09-01. He also sustained a vertebral compression fracture which, may have occurred during the accident. The fracture is visible on his lateral chest x-rays from 06-21-01 and 06-22-01, although it is not mentioned on the radiologist’s reports. Mr. Wilson eventually developed kidney failure and died on 08-03-01.

In light of her understanding of the facts, as stated above, Dr. Koenig opined that the motor vehicle accident of June 2, 2001 was the precipitating factor for his MI. Dr. Koenig supports her opinion with the suggestion that Mr. Wilson’s initial symptoms of nausea, cold sweats, and chest pain started after the accident, but on the same afternoon of the accident. Further, in providing a causal relationship, Dr. Koenig propounds the following summary opinion:

In summary, the accident on 06-02-01 was a substantial factor in causing Mr. Wilson’s death. The accident caused him to have a heart attack. The damage from the heart attack itself and the complications from the surgery to treat the heart attack caused his death.

On cross-examination Dr. Koenig acknowledged that, at the time of her examination of Mr. Wilson, he suffered from several illnesses, including insulin dependent diabetes, congestive heart failure, prior coronary artery bypass graft surgery, hypertension, chronic obstructive pulmonary disease, chronic progressive renal disease and insufficiency, and that the combination of the conditions presented Mr. Wilson with a “very, very serious illness.” Further, on cross-examination Dr. Koenig acknowledged that she is not a cardiologist and enjoys limited training in the field of cardiology, and that she would probably defer her opinion to a cardiologist with an opinion founded upon all relating medical records.

Michael W. Farrar, M.D., who is a physician practicing in the specialty of cardiology, testified by deposition on behalf of the employer and insurer. As a consulting expert, secured by the employer and insurer subsequent to Mr. Wilson’s death, Dr. Farrar did not have occasion to examine Mr. Wilson. However, he did review the medical records of Mr. Wilson and the other records relating to this case. In light of his evaluation and review of the records presented in this case, Dr. Farrar offers an opinion of causation different from the opinion of Dr. Koenig, stating that Dr. Koenig’s assessment is incorrect and that the motor vehicle accident of June 2, 2001, was not a substantial factor in the cause Mr. Wilson’s heart attack or death.

Notably, according to Dr. Farrar, based on his review of the medical records, Mr. Wilson suffered with poor health that included a variety of longstanding progressive problems and risk factors before the accident of June 2, 2001. These preexisting illnesses included abdominal aortic aneurysms, hypertension, abnormal blood pressure, high cholesterol, and coronary artery disease with prior myocardial infarction. In light of these underlying conditions, and his understanding of the facts, Dr. Farrar states that the motor vehicle accident of June 2, 2001, did not cause the severity and extent of Mr. Wilson’s underlying coronary artery disease, left ventricular dysfunction and vascular disease; and the motor vehicle accident of June 2, 2001, did not cause his known abdominal aortic aneurysm, poorly controlled hypertension, or blood problems. Rather, according to Dr. Farrar, these conditions, together with Mr. Wilson smoking two packs of cigarettes a day, led to Mr. Wilson’s heart attack and subsequent death.

Further, Dr. Farrar notes that Dr. Koenig’s assessment and opinion that Mr. Wilson suffered a heart attack as a consequence of the accident is unsupported by the evidence. Explaining this opinion, Dr. Farrar states that Mr. Wilson’s enzyme course indicates that the myocardial infarction more than likely happened in the evening of June 3, 2001, at the motel. Supporting this statement, Dr. Farrar states that CPK-MB appears in the serum 3 to 6 hours after the onset of symptoms and peaks at 12 to 24 hours, and Troponin-I in the serum 3 to 6 hours after the onset of symptoms, peaking at 12

to 16 hours. In the case of Mr. Wilson, his CPK peaked at 9:40 a.m. on June 4, 2001, and his Troponin peaked at 5:20 p.m. on June 4, 2001. Both studies, according to Dr. Farrar, indicate the myocardial infarction happened in the evening of June 3, 2001, while Mr. Wilson was at the motel. Further, according to Dr. Farrar, the myocardial infarction suffered by Mr. Wilson on June 3, 2001, was a tiny heart attack.

Thusly, Dr. Farrar propounds the following comment:

The enzyme elevations are most compatible with the onset of symptoms sometime in the evening of June 3, 2001. They would not be consistent with a heart attack that began to occur immediately after the automobile accident. ...there is no documentation in the records at all anywhere of any symptoms occurring between the time of the auto accident and the presentation to the emergency room other than at ten o'clock on June 3rd.

* * *

The auto accident had nothing to do with his underlying cardiovascular disease. His underlying cardiovascular disease was caused by smoking, hypertension, and hyperlipidemia. The tiny myocardial infarction, again, was a result of the underlying cardiovascular disease and not vice versa.

* * *

I don't find any evidence that the motor vehicle accident played any significant role at all in his death. I think it was a coincidental factor.

II.

Claim of Dependency

Ms. Escobedo indicates that she first met Mr. Wilson approximately 30 years ago and became friends with him and Mary Pace, his wife at the time. However, before she and Mr. Wilson entered into a consensual partner relationship with one another, they each lived their own lives entering into other relationships. Notably, Ms. Escobedo married Doyle Roland in 1958; and the couple remained married until divorcing in 1978. That year Ms. Escobedo underwent a marriage ceremony with Christopher Chavez, when the couple was in Mexico; but the marriage was deemed null and void because Mr. Chavez was married at the time. In 1985 Ms. Escobedo entered into a marriage with John Escobedo, which continued until the couple divorced in 1991. In 1994 Ms. Escobedo married Nickey Hedges. This marriage lasted approximately one year.

Subsequent to obtaining a divorce from Mr. Hedges in the summer of 1995, Ms. Escobedo got together with Mr. Wilson. At this time Ms. Escobedo was living in a hotel (Stonecrest Motel). And, soon after getting together, Mr. Wilson began staying in the hotel with Ms. Escobedo. According to Ms. Escobedo, she and Mr. Wilson lived together in Colorado for approximately six months, with their lease being jointly signed under the name "Wilson," while holding themselves out to others as husband and wife. While in Colorado, the couple did not open any bank accounts together; and Ms. Escobedo's driver's license and credit cards are under the name "Nora Escobedo."

The couple then moved to Winona, Missouri, though the exact date is readily determinable, with Ms. Escobedo offering inconsistent dates. However, according to the testimony offered by Ms. Escobedo at trial, Ms. Escobedo and Mr. Wilson moved from Colorado to Missouri on April 1, 1996. Upon arriving in Missouri, the couple lived in a trailer house for a few months before purchasing a cabin at Route 1, Box 1222, Winona, Missouri 65588.

After the couple moved into the cabin in Missouri, they took a trip to Las Vegas and traveled through Fort Collins to visit her brother on the way home. On this trip, the couple performed a mock wedding ceremony, which Ms. Escobedo described as being "kind of a joke." Apparently, Ms. Escobedo's brother, Eugene Yardley, performed the ceremony on the patio; and the parties celebrated with cake and ice cream. Yet Eugene Yardley is not a minister, and no marriage license was ever issued.

It is important to note that the ceremony took place while the couple was domiciled and residents in and of Missouri. In fact, most of the incidents showing common-law marriage that the claimant asserts happened not when the couple was in Colorado, but after Mr. Wilson and Ms. Escobedo moved to Missouri and were domiciled and residents in and of the state of Missouri. The parties offer different examples of conduct, which at times suggest that Mr. Wilson and Ms. Escobedo held themselves out as husband and wife, and at other times that the couple were not married, but single individuals.

FINDINGS AND CONCLUSIONS

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo. App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo. Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo. App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Bruflat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo. App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo. App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the claimant need not establish the elements of the case on the basis of absolute certainty. It is sufficient if the claimant shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience, which inclines the mind to believe, but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo. App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575, 577 (Mo. App., W.D. 1994); and *Downing v. Williamette Industries, Inc.*, 895 S.W.2d 650 (Mo. App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo. App. W.D. 1993).

I. Accident & Medical Causation

The parties stipulate that, on June 2, 2001, the employee, James A. Wilson, sustained a motor vehicle accident while performing the duties of his employment with Freeman Baker. The parties disagree on whether this accident caused Mr. Wilson to suffer an injury and his subsequent death.

The initial issue before the undersigned is whether the incident of June 2, 2001 is causally related to Mr. Wilson's heart attack and subsequent death. The parties offer different medical opinions and arguments for resolution of this issue.

An accident is defined in Section 287.020.2, RSMo. 1993, to include "an unexpected or unforeseen identifiable event or series of events happening suddenly or violently, with or without human fault, and producing at the time objective symptoms of an injury." Further, an accident is recognized as being compensable "if it is clearly work related". In examining whether an injury is clearly work related, Section 287.020.2, RSMo. 1993, in pertinent part states:

An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

The term "injury" is defined in Section 287.020.3 RSMo., 1993. The legislation reads as follows:

3.(1) In this Chapter the term "injury" is hereby defined to be an injury which has arisen out of

and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

An examination of the statutory language referring to accident and injury indicates that an injury is clearly work-related if work was a substantial factor in the cause of the resulting medical condition or disability. Notably, the definition of "accident" is concluded by the statement, "an injury is not compensable merely because work was a triggering or precipitating factor."

The language "an injury is compensable if it is clearly work related" is found in *Wolfgeher v. Wagner Cartage Service, Inc.*, 646 S.W.2d 781 (Mo. banc 1983). The language referencing that an injury is not compensable merely because work was a triggering or precipitating factor is found in *Wynn v. Navajo Freight Lines, Inc.*, 654 S.W.2d 87 (Mo. banc 1983), a companion case to the *Wolfgeher* supra. This statutory language, as incorporated into the 1993 amendments to '287.020 RSMo., therefore may be viewed as a legislative affirmation of the *Wolfgeher* decision, and legislative repeal of the *Wynn* decision. See, *Smith v. Climate*, 939 S.W.2d 429, 434 (Mo. App. E.D. 1996).

In addition, injuries triggered or precipitated by work are nonetheless compensable if the employee shows the work is a substantial factor in the cause of the injury. *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo. 1999). The person's work does not have to be "the" substantial factor, but merely "a" substantial factor. A causative factor may be substantial, even if it is not the primary or most significant factor. Compensation is appropriate so long as the accident triggered a physical breakdown or change in the pathology in the employee's body. A work-related accident could be both a triggering event and a substantial factor. *Cahall v. Cahall*, 963 S.W.2d 368 (Mo. App. 1998).

After consideration and review of the evidence and, after taking into consideration the applicable law, I find and conclude that the employee did not sustain a compensable injury. In resolving this issue and the differences in medical opinion, I find Dr. Farrar to be credible and the more competent witness addressing the issue of medical causation. The accident of June 2, 2001, did not cause Mr. Wilson to suffer a myocardial infarction and subsequent death.

Prior to June 2, 2001, Mr. Wilson suffered with poor health that included a variety of longstanding progressive problems and risk factors, including abdominal aortic aneurysms, hypertension, abnormal blood pressure, high cholesterol, and coronary artery disease with prior myocardial infarction. In light of these underlying conditions, the motor vehicle accident of June 2, 2001, did not cause the severity and extent of Mr. Wilson's underlying coronary artery disease, left ventricular dysfunction, and vascular disease; and the motor vehicle accident of June 2, 2001, did not cause Mr. Wilson's known abdominal aortic aneurysm, poorly controlled hypertension, or blood problems. These conditions, together with Mr. Wilson smoking two packs of cigarettes a day, led to Mr. Wilson's heart attack and subsequent death.

Further, the heart attack did not occur immediately after the accident, but later while Mr. Wilson was at his hotel. The timing of the June 2, 2001, accident and the subsequent heart attack and death was merely coincidental. At most, the accident of June 2, 2001, may be viewed as a triggering or precipitating incident, but not a substantial factor in the cause of the heart attack and subsequent death. Accordingly, in light of the forgoing, the Claim for Compensation is denied. All other issues are rendered moot.

Date: September 13, 2004

Made by: /s/ L. Timothy Wilson
L. Timothy Wilson
Associate Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Renee Slusher
Renee Slusher

[1] At the hearing the employer and insurer requested that the record be left open in order to afford the employer and insurer the opportunity to question Michael W. Farrar, M.D. relative to additional medical records and the health of the employee James Wilson. Over objection of the claimants, and in light of the parties previously agreeing to leave the record open for 30 days, the employer and insurer were granted 30 days to obtain additional evidence from Dr. Farrar. In light of this ruling the employer and insurer took the deposition of Dr. Farrar on July 9, 2004, which occurred within this 30-day period but was submitted to and received by the Division of Workers' Compensation on or about August 9, 2004. Although the submission of this additional evidence exceeded the 30-day period, the delay is minimal and not unduly prejudicial to the claimants. Therefore, Exhibit 3 is received and admitted into evidence.