

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

Injury No.: 02-086208

Employee: James R. Wilson  
Employer: Ameren UE  
Insurer: Self-Insured c/o Corporate Claims Management, Inc.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

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 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 administrative law judge dated February 2, 2009. The award and decision of Administrative Law Judge Kevin Dinwiddie, issued February 2, 2009, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 22nd day of May 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING  
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William F. Ringer, Chairman

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Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

# FINAL AWARD

Employee: James R. Wilson

Injury No.: 02-086208

Dependents: N/A

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

Employer: Ameren UE

Additional Party: State Treasurer, as custodian of the  
Second Injury Fund (open)

Insurer: Self-insured c/o Corporate Claims Management Inc.

Hearing Date: Thursday, October 30, 2008

Checked by: KD/cmh

## FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes; injury by accident
4. Date of accident or onset of occupational disease: August 14, 2002
5. State location where accident occurred or occupational disease was contracted: St. Charles 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? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes, self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee was in a trench, digging and attempting to avoid an electrical line, while another employee was operating a motorized hoe; claimant was injured when he was struck by the bucket of the hoe and knocked down.
12. Did accident or occupational disease cause death? No Date of death: N/A
13. Part(s) of body injured by accident or occupational disease: chest wall, right hip, low back, right knee, right and left upper extremities

- Nature and extent of any permanent disability: 2% permanent partial disability of the body as a whole, referable to the chest wall. All other issues as to compensability found in favor of the employer and insurer.

15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$587.58
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$940.84

- Weekly compensation rate: \$627.213/ \$340.12
- Method wages computation: by agreement of the parties

**COMPENSATION PAYABLE**

- Amount of compensation payable: Employer and Insurer liable for a 2% permanent partial disability of the body as a whole, referable to the chest wall, equals 8 weeks at the rate of \$340.12 per week..... \$2,720.96.

22. Second Injury Fund liability: open

23. Future requirements awarded: N/A

Said payments to begin as of the date of this award and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Jack J. Adams

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: James R. Wilson

Injury No: 02-086208

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: N/A

Employer: Ameren UE

Additional Party State Treasurer, as custodian of the  
Second Injury Fund (open )

Insurer: Self-insured, c/o Corporate Claims Management, Inc.

Checked by: KD/cmh

The claimant, Mr. James R. Wilson, appeared at hearing in person and by and through his counsel, Jack J. Adams, and testified on his own behalf with regard to a work injury agreed by the employee and employer/insurer to be compensable under the workers' compensation act. The claimant seeks a final award, and requests a finding in his favor on the two issues agreed by the parties as being in dispute in this matter: medical causal relationship as to various complaints of ill being; and as to nature and extent of permanent partial disability. Mr. Wilson requests that the issue as to the liability of the Second Injury Fund remain open.

In support of his claim for compensation, the claimant submitted various medical and chiropractic records and the expert testimony by deposition of Robert Poetz, D.O.

The employer and insurer, Ameren UE, self-insured, appeared at hearing through its counsel, Patrick A. Patterson and Matthew J. Barnhart, and solicited the fact witness testimony of Ms. Deborah Kleve; Mr. Chris Kilgore; and Mr. Kevin Johnson. The employer/insurer further submitted certain medical records and the expert testimony by deposition of Drs. Henry Ollinger and Michael Nogalski.

In advance of taking testimony in the matter, the employee and employer agreed that there was no dispute as to a medical causal relationship between the claimant's complaints of a permanent state of ill being in the chest wall and the involved work injury. When asked as to permanent disability related to the involved work injury, Dr. Nogalski responds "Given the history provided, that of being struck by a backhoe, it would be reasonable to consider a 1 to 2 percent permanency."; Employer and Insurer's Exhibit No. 2, at page 17. Dr. Poetz also believes the work injury resulted in permanent partial disability at the chest wall, Claimant's Exhibit A at page 12. The only dispute as to the chest injury is as to the extent of permanent partial disability. The parties have put in dispute both medical causal relationship and nature and extent of permanent partial disability as relates to complaints of ill being in the lumbar spine; right hip; and right and left upper extremities at the level of the wrists.

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EXHIBITS  
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The following exhibits were received in evidence at hearing:

Claimant's Exhibits

1. Deposition of Robert Poetz, D.O., taken on 8/12/08
2. Certified medical records of Dr. John Havey (Boone Orthopaedic Associates, L.L.C.; Boone Hospital Center)
3. Certified medical records of Audrain Medical Center
4. Certified medical records of Columbia Orthopaedic Group
5. Subpoena Duces Tecum and chiropractic records of Murphy Chiropractic & Acupuncture, James D. Murphy, DC, PC

Employer and Insurer's Exhibits

1. Deposition of Henry Ollinger, M.D., taken on 6/05/08
2. Deposition of Michael Nogalski, M.D., taken on 6/02/08
3. Medical records of Dr. Kathleen Weaver (Audrain Medical Center)
  - Certified medical records of Centralia Family Health Clinic (Dr. Curtis D. King)
  - Medical records of BHC Occupational Medicine (Dr. Michael J. Szewczyk)

FINDINGS OF FACT AND RULINGS OF LAW

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SUMMARY OF WITNESS TESTIMONY  
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Mr. Wilson is found to be a generally credible witness, and the work history; medical history; history of injury; and subsequent complaints of ill being as contained in the following summary of claimant testimony are hereby incorporated into these findings of fact by this reference, excepting as to a discussion of any perceived misstatement of fact or conflict with other evidence as noted by the fact finder herein. Likewise, Ms. Kleve and Messrs. Kilgore and Johnson are believed to have testified credibly, and their testimony to be worthy of belief unless otherwise specified herein.

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James R. Wilson  
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Mr. Wilson, 54 years old as of the date of hearing, has a degree in auto/diesel mechanics, and began his employment with the employer in approximately April of 1990, employed in several capacities, most recently as an electrician mechanic. In August of 2002 the claimant was working at a substation, and while in the course of digging up a pvc pipe to wire one device to another, he was accidentally struck by the bucket on the small track hoe being operated by another employee. At the time Mr. Wilson was digging with

a shovel in a shallow trench; claimant relates that the bucket struck him in the hands, pushing the held shovel into his chest. Mr. Wilson recalls striking his right leg on the bucket as he was knocked to the ground, falling on his back, and having the wind knocked out of him but remaining conscious.

The claimant relates that he went to the worksite trailer, and spoke to Chris Kilgore, who was filling in for the claimant's regular supervisor. Mr. Wilson recalls that he was feeling sick to his stomach, but declined the offer to be taken to the hospital for several reasons, including the fact that he was new to the substation; that he preferred to return to Mexico, Missouri where the company headquarters was located and where the claimant had his home; and that he did not wish to cost the substation the award for safety excellence.

Mr. Wilson recalls being hurt on a Thursday, and requesting on Friday to be referred by the employer for medical evaluation. Mr. Wilson recalls being referred to a doctor in Columbia, Missouri, and cannot recall with certainty but believes his first appointment was on the following Monday. Mr. Wilson recalls five or six doctor visits, and acknowledges that during his treatment he performed home exercises; continued working but limited his activity; and was not prescribed nor did he take any medication. The records of Dr. Szewczyk notwithstanding, at hearing Mr. Wilson notes that his physical complaints did not resolve.

Mr. Wilson acknowledges that he continued to work for the employer thereafter despite leg and hand pain, and notes that although he was able to perform all the functions of his job, the job mostly involved riding in a truck and was not that physical.

Claimant relates that he currently has trouble bending his back or getting up from the floor, and further notes that his back has gotten gradually more stiff following his 8/14/02 work injury. Mr. Wilson recalls that he sought subsequent evaluation by his family physician and from a specialist.

Mr. Wilson notes that he left his employment in February of 2004. Mr. Wilson acknowledges that he worked for Ameren UE without medical restriction, having been terminated not for an inability to work, but rather for using a company gas card for personal use. Claimant also acknowledges that he was working without medical restriction following a similar work injury in 1998.

For the year thereafter Mr. Wilson worked on a hog farm. Claimant notes that his employment at the hog farm was interrupted by the need for right hip replacement surgery. Mr. Wilson denies suffering any injury while at the hog farm, noting that he was unable to perform certain work due to pain in his leg, hip, and back. Claimant relates that subsequent to the hog farm he began driving a truck, and denies suffering any motor vehicle accidents or other injuries from the time he began driving a truck to the present. Mr. Wilson acknowledges that for a time he would transport mobile homes and other such units from state to state, and that more recently he has been limited to local delivery. Mr. Wilson further acknowledges that he owns about ten acres in Richmond, Missouri, where he and his 16 year old take care of three horses; care for the property; and will hunt from time to time.

On cross examination, Mr. Wilson agreed that he began working at the hog farm as a breeder some two or three months prior to seeing Dr. Havey. Mr. Wilson further agreed that the hogs weighed around 500 to 600 pounds; that he would walk the hogs from pen to pen; and agreed that it could get rough around the hogs, being bumped or just generally when working around them. Mr. Wilson further agreed that his hip complaints were aggravated by his work as a hog breeder. Mr. Wilson also acknowledged that although he testified on direct that he had no injury to his hip or back post 8/14/02, he acknowledges, as per the notation in Dr. Havey's medical record, regarding an event in September of 2004 when he swung his leg over a fence and felt a pop in his hip.

When asked when his hip complaints started, Mr. Wilson noted that his hip gradually became more and more sore after the accident (note, however, that the records of Dr. King reveal right hip complaints as early as May of 2002). Mr. Wilson further recalls that prior to the hip replacement his pain became progressively worse, and that he just assumed that it was back pain. Later during cross examination, Mr. Wilson acknowledged that it was possible that he made right hip complaints to Dr. King in May of 2002, but does not recall a history of x-ray of the hip, and does not recall whether he advised Dr. King as to any prior injury to the right hip, or as to whether he made any demands for treatment for hip complaints after his work injury in 1998.

The claimant does recall receiving therapy at "Teamworks" that relieved hip pain complaints.

Mr. Wilson also complains that after his work injury he suffered from numbness in his thumbs that "never really went away". He relates that he made hand complaints to the initial treating doctor, but that no diagnostics as to the hands were ever performed during the course of that doctor's treatment. Mr. Wilson notes that his hand complaints continued; that he put up with the discomfort; and that he eventually had surgery to the hands (the records of Dr. Weaver, Employer and Insurer's Exhibit No. 3, document right and left carpal tunnel surgeries performed in May of 2005). Claimant agrees that it is possible that after treating in 2002 he did not mention any hand complaints to any physicians until seeing Dr. Weaver in 2005. Mr. Wilson testified that post the surgeries his hands felt fine, and that the numbness had resolved.

As for any back complaints, Mr. Wilson acknowledged on cross examination that he suffered a back injury as a result of the backhoe incident in 1998, and that his settlement included a benefit for a 5% permanent partial disability of the back, noting that the prior injury was to a different area of his back.

As for his chest complaints, Mr. Wilson recalls that after being struck by the bucket, his chest was sore, but not bruised. He denies having any the doctor perform any diagnostics with respect to his chest. Claimant is known to have a preexisting asthmatic condition, and in a chest x-ray report dated 4/26/05, taken at Audrain Medical Center in prep for carpal tunnel surgery, claimant is noted to have "history of asthma with no chest complaints".

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Deborah Kleve

This witness relates that she is currently an assistant supervisor with Corporate Claims Management. Ms. Kleve notes that she has been with Corporate Claims Management since May of 2001, and acknowledges that she worked as a claims adjuster on the Ameren UE account from May of 2001 through approximately May of 2006. The witness relates that she handled a geographic area that included Mexico and Excelsior Springs, Missouri, and acknowledges that she handled the August of 2002 claim made by Mr. Wilson, the claimant in this matter.

Ms. Kleve acknowledges that she was aware that the claimant had settled with respect to a prior work injury that occurred in 1998, and that she had a conversation with Mr. Wilson prior to the time she handled the August of 2002 claim. Ms. Kleve recalls that around June of 2002 the clerical department received a phone call from the claimant, and that she returned the call. Ms. Kleve stated that during their phone conversation Mr. Wilson noted that he had received a recent medical evaluation that suggested that claimant may have suffered a fractured pelvis in the past, and Mr. Wilson assumed that it was a result of his work injury in 1998, and wanted to seek medical treatment. Ms. Kleve recalled that Mr. Wilson made specific complaint as to his hip, and that she advised him that he had closed that injury claim in 2000 and that no further benefits would be provided. Ms. Kleve recalls no subsequent conversations with Mr. Wilson thereafter. Ms. Kleve further recalls that after the claimant was released by Dr. Szewczyk following his injury in 2002, the witness was unaware of any further requests from Mr. Wilson for treatment to his hands; low back; right hip; or chest.

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Chris Kilgore

Mr. Kilgore relates that in 1981 he was employed by Missouri Power and Light, which then merged with Union Electric, and which then also merged and became Ameren UE. The witness relates that since 1991 he has been a substation crew supervisor, working with substations west out of Moberly, Missouri. Mr. Kilgore recalls that he is familiar with the claimant, Mr. James Wilson, because the claimant and Mr. Kilgore were in an AC-DC class together, and Mr. Wilson was transferred to Excelsior Springs and worked for Mr. Kilgore for awhile beginning in June of 2003 and ending in February of 2004.

Mr. Kilgore recalls that on the date of injury, 8/14/02, he was asked to fill in for the claimant's usual supervisor, Mr. Dave Kronk. Mr. Kilgore recalls that on that day Mr. Wilson was struck by a bucket while working in a trench. Mr. Kilgore acknowledges that he and Mr. Wilson had several conversations after Mr. Wilson began working for him in June of 2003, and cannot recall the claimant ever having discussed the

injury that occurred on 8/14/02; cannot recall the claimant ever asking for medical treatment; ever complaining as to being unable to perform a job; or complaining as to a limited ability to work, with the exception of one occasion when the claimant was suffering from kidney stones.

Mr. Kilgore notes that Kevin Johnson was the "lead worker" and the claimant's immediate supervisor on the job. Mr. Kilgore notes that as crew supervisor, he receives direct monthly feedback on apprentice workers such as Mr. Wilson. He notes that he would meet with apprentices monthly and prepare a work review and report, signed by both parties, and sent to the department supervisor and to the training department. Mr. Kilgore recalls that Mr. Wilson was never cited for poor work performance, nor were any reports or complaints made to Mr. Kilgore concerning the inability of Mr. Wilson to perform the work expected of him.

#### Kevin Johnson

Mr. Johnson relates that since July of 2001 he has been the lead electrician mechanic for Ameren UE- Excelsior Springs, and that he has been employed by Ameren UE since May of 1994. The witness recalls that he was a coworker with Mr. Wilson from June of 2003 to February of 2004; that prior to working with Mr. Wilson he became aware of the work injury suffered by Mr. Wilson in 2002; and that he spoke with Mr. Wilson about that work injury once they began working together.

Mr. Johnson could not recall Mr. Wilson ever having suggested that he was in need of medical treatment as a result of his injury in 2002. With respect to the time period that he worked with Mr. Wilson, Mr. Johnson could not recall an instance where the claimant made complaint as to a specific body part attributed to his injury by accident in 2002. Mr. Johnson also could not remember Mr. Wilson ever having complained that there was a part of his job that he was incapable of doing as a result of his injury in 2002.

Mr. Johnson recalls that he would work with the claimant full time, eight hours a day, five days a week, working side by side with the claimant, performing general maintenance on breakers and transformers; installing batteries; climbing ladders; taking voltage readings; and crouching down to take samples from bottom valves. Mr. Johnson noted that a fair amount of travel was required to perform maintenance, depending on the location being worked on that particular day, ranging anywhere from ten minutes in a day to four hours or so of travel time in a day.

Mr. Johnson acknowledges that he was aware of the backhoe incident suffered by Mr. Wilson in 2002, and recalls the claimant making complaints of pain as to the mid-body area, back and hip, related to that accident.

#### MEDICAL CAUSATION/PERMANENT PARTIAL DISABILITY

On 8/16/02, two days following the work injury at issue, Mr. Wilson presented for medical evaluation by Dr. Michael J. Szewczyk. The doctor took a history of injury in 1998 and again in 2002, with the claimant in both events being struck by a backhoe bucket while at work. Claimant reported his physical complaints, and left rib and lumbar spine x-rays were reported negative for acute bony abnormality. The claimant was diagnosed as having suffered a work related chest wall contusion; thumb contusion; and thoracolumbar and cervical strain. Dr. Szewczyk was not sure of the origin of headache and nausea complaints. Dr. Szewczyk offered light duty, and the claimant opted to continue with his regular duties. Mr. Wilson followed up with Dr. Szewczyk on 8/16/02 and again on 8/23/02. On 8/23/02 the doctor noted resolution of thumb, anterior chest wall, and headache complaints, with improvement in neck stiffness and back soreness. Although Mr. Wilson testified as to ongoing complaints from having struck his right knee on the bucket of the backhoe, the records of Dr. Szewczyk are consistent, with multiple references to left leg injury and left knee contusion. Mr. Wilson had follow ups on 9/04/02; 9/30/02; and on 10/24/02. At the October setting claimant was believed to have had resolution of hand, chest wall, cervical, thoracolumbar, and left knee complaints, except for some ongoing left knee and back soreness. Noteworthy is the absence of any mention in the notes of Dr. Szewczyk as to any right hip complaint, or as to any evaluation of that part of the body. The initial evaluation

in August mentions that the claimant was an overweight male, and that he ambulated normally. The same notation as to a normal gait was contained in the last three evaluations, and all of the records of Dr. Szewczyk are devoid of any history of complaint as to the hips.

Medical records from of Dr. Havey relate to a right hip arthroplasty in 2004, and those of Columbia Orthopaedic Group are from several doctors regarding right and left shoulder surgical repairs in 1999, and later on in 2005 certain records of Dr. John Miles regarding low back and right leg and buttock pain. There are also medical records from Audrain Medical Center relating to a variety of conditions treated, including diagnostics and treatment for back and hip complaints; right knee records from 1982 concerning a right knee surgery; and records post the earlier backhoe incident occurring in 1998. Medical records from Dr. Curtis King, Centralia Family Clinic, document a history of right hip pain, date of onset two months prior to the office visit on 5/17/02, some three months prior to the claimant's work injury at issue. The records of Dr. King reveal that hip x-rays were being actively sought in May and June of 2002. The records show that on 12/30/02 Mr. Wilson was complaining that his right hip was hurting again, and two views of the right hip performed on 12/30/02 revealed degenerative changes and femoral head osteophytes, with no acute fracture, dislocation, or subluxation. (Employer and Insurer's Exhibit No. 4). With the exception of the treatment records of Dr. Szewczyk from 8/16/02 to 10/24/02, the 12/30/02 medical from Dr. King appears to be the medical record most contemporaneous with the work injury on 8/14/02.

The record was bereft of any specific treatment provided specifically for back complaint until April 2, 2004, when the claimant complained to Dr. King of back pain, and had an MRI taken on 4/6/04. The MRI was interpreted as showing "mild diffuse disc desiccation with bulging annuli, but no disc herniation. There is associated significant congenital narrowing of the spinal canal with acquired facet arthropathy. This leads to some lateral recess and subarticular stenosis, which is most severe at the L3-L4 and L4-L5 levels. At L3-4 the left lateral recess and foramen are most severely affected." Records indicate that the claimant continued to treat with Dr. King into June of 2004, receiving medication for his back complaints (Employer and Insurer's Exhibit No.4).

On or about 3/04/05, Dr. Kathleen Weaver chose to give the claimant a lumbar epidural steroid injection in order to distinguish hip versus back complaints. On 3/8/05, Dr. Buchanan met with Mr. Wilson by referral by Dr. Weaver; noted a two year history of lumbar radiculopathy; and administered to Mr. Wilson a lumbar epidural steroid injection at the L4-5 level, inasmuch as a bony obstruction prevented an injection into the L5-S1 space. (Claimant's Exhibit C). On 3/18/05 Dr. Weaver performed a follow up evaluation and chose to start the claimant on a back program and a pump up back brace. On 4/7/05 Dr. Buchanan noted a history of complete resolution of pain for three weeks, with the pain returning worse than ever thereafter and without improvement from conservative treatment. Dr. Buchanan administered a repeat lumbar steroid injection to the L4-5 interspace.

On 6/18/05, during the interim between the 2nd and a 3rd epidural steroid injections, Mr. Wilson met with Dr. John Miles, and provided him the history of the two backhoe incidents the claimant believed to be the cause of years of gradually worsening low back issues. Dr. Miles reviewed the lumbar spine MRI of 4/6/04, and referred the claimant for EMG/NCV study.

On 6/28/05 Mr. Wilson had electrodiagnostic studies, EMG/NCV performed as to his right lower extremity. The results were reported as normal by Dr. Jennifer Clark, who conducted the studies, and were also deemed normal by Dr. Miles, who met with Mr. Wilson that same date. At that point Dr. Miles was contemplating more invasive treatment, such as limited decompression at L3-4 in the event a third epidural steroid injection did not give the claimant complete relief of his complaints (records of Columbia Orthopaedic Group, Claimant's Exhibit D). Interestingly, Dr. Miles supposed the level L3-4, with mostly congenital stenosis and some superimposed degenerative change, to be the level that was symptomatic. However, on 7/01/05 Dr. Buchanan provided the third injection to L5-S1, where he believed the pathology was located.

Dr. Robert P. Poetz met with Mr. Wilson on 12/18/06 to provide an expert medical evaluation and opinion as to medical causation and permanent disability with respect to injuries received by accident on 8/14/02. Dr. Poetz took social and employment histories, and both past and current medical histories; inquired as to the claimant's job description; reviewed medical records; elicited physical complaints; performed a physical examination; offered his recommendations as to treatment and as to ways of limiting

physical activity; and rendered his diagnosis and opinion as to cause and effect as to permanent disability (Claimant's Exhibit A).

Dr. Poetz concluded that the claimant suffered permanent partial disability to the lumbar spine and to the right hip, with the disability both preexisting the involved work injury and as a direct result of the work injury; permanent partial disability to the chest, and to the left and right upper extremities at the wrist, all believed to be related to the work injury at issue; and permanent partial disability to shoulders bilaterally, and preexisting the 8/14/02 injury.

On 5/31/07 Dr. Henry Ollinger, board certified in plastic surgery with experience in performing carpal tunnel surgical releases, performed an evaluation of Mr. Wilson at the request of the employer and insurer. Dr. Ollinger elicited an employment history; was advised by Mr. Wilson as to his employment history with Ameren UE, concluding in 2004; Dr. Ollinger understood that the claimant then worked a hog farm from March of 2004 to April of 2005, and began to drive trucks, hauling mobile homes for three different employers for about six months with each employer (Employer and Insurer's Exhibit No. 1, at. p.8)

Dr. Ollinger acknowledges he read various of those medical records generated after the August of 2002 injury, including as it is described in the medical records of BHC Occupational Medicine (those records, for treatment from August of 2002 through October of 2002, are erroneously referred to by Dr. Ollinger, and by others at deposition, as "BJC" records), and recalls that the initial treating records have scant reference to thumb complaints; that those references disappeared from those records a week or so after the initial visit, after the claimant reported no discomfort in his thumbs; and that the balance of those initial treating records, and all the treating records up to the visit with Dr. Weaver in March of 2005, were devoid of any reference to the hands, or to any sort of diagnosis of problems with the hands or wrists. Dr. Ollinger notes that the first diagnosis of carpal tunnel syndrome was entered into a record by Dr. Weaver in early 2005. Dr. Ollinger further notes that he took a history of the 8/14/02 injury from Mr. Wilson, and was advised that from the time the bucket struck the claimant in the hands, driving the shovel into to his chest and knocking him to the ground, the claimant suffered constant bilateral hand numbness, particularly in the thumb, index, and long fingers, with decreased power in his hands, up to the date of his carpal tunnel surgeries in 2005.

Dr. Ollinger elicited the claimant's hand and wrist complaints, and subsequently performed a physical examination of the bilateral upper extremities. The evaluation and the expert medical opinion as to diagnosis, causation and as to disability provided by Dr. Ollinger in this matter was limited to hand complaints and physical findings related to the bilateral carpal tunnel surgeries performed in May of 2005.

Dr. Ollinger concluded that the claimant was in need of no further care for his hands; that his clinical and medical findings lead him to believe the claimant is capable of using his hands for any work activity without restriction; and that the events of 8/14/02 as described, along with the treatment history, suggest that the involved injury would not be the proximate cause or a substantial factor for the development of bilateral carpal tunnel syndromes. More particularly, Dr. Ollinger is not aware of any history in the record to support a finding of carpal tunnel syndrome from repetitive use; and further concludes that the acute injury suffered on 8/14/02 was not sufficiently traumatic to the hand or wrist as to be the medical cause of a carpal tunnel nerve entrapment. Dr. Ollinger points out that the claimant did not suffer the kind of injury that would result in a deep hematoma, such as a fractured or dislocated wrist. Instead, he notes that the medical records support only a finding of thumb contusions that resolved in a matter of weeks. Dr. Ollinger further doubts that the mechanism of injury, given the manner in which the hands were positioned at the point of impact with the bucket, could result in the type of pressure to the nerve that could result in a pathology of carpal tunnel. Dr. Ollinger also notes that in instances of a traumatic inducement of a carpal tunnel syndrome, symptom onset would occur within hours, days, or a couple weeks. Dr. Ollinger notes that there is nothing in the medical records to suggest an onset of carpal tunnel syndrome, nor were there any exam findings of carpal tunnel syndrome, until the claimant was evaluated by Dr. Weaver in 2005. The issue as to causation notwithstanding, Dr. Ollinger believes that the claimant has ongoing carpal tunnel symptoms, and intimates that a 10% permanent partial disability would be within the realm of reason at each wrist.

The employer and insurer also sought a medical evaluation of Mr. Wilson by Dr. Michael Nogalski, who has an active orthopedic practice, which includes treatment of low back injuries and the performance of hip replacement surgery. Dr. Nogalski met with Mr. Wilson on May 31, 2007, and had the opportunity to

elicit a history of injury; to elicit a history of past and current complaint; to review the various medical records; and to perform a physical examination. Dr. Nogalski examined the chest, and concluded that the claimant might be suffering a 1 to 2% permanent partial disability, referable to the involved injury, as a result of traumatic blow to the chest with ongoing subjective complaint in the chest wall, and in the absence of any finding of costochondritis or rib fracture.

Dr. Nogalski further summarized the medical history of evaluation and treatment for complaints at the low back and right hip; performed his own physical examination; reported his findings based on his evaluation of the low back, right hip, and bilateral lower extremities; and found the claimant to be post right hip replacement, with apparent leg length discrepancy, right longer than left; and lumbar spinal stenosis with general subjective improvement but with ongoing symptoms.

Dr. Nogalski concludes that the right hip complaints experienced by Mr. Wilson were not causally related to the accident on 8/14/02, noting that the claimant had significant hip arthritis that necessitated a total hip replacement, and that the medical records and the history provided by Mr. Wilson did not causally link any degree of permanent partial disability in the right hip to the injury on 8/14/02.

Dr. Nogalski likewise concluded that the complaints expressed to him by Mr. Wilson as to the low back were not causally related to the injury suffered on 8/14/02; that the claimant reached maximum medical improvement in October of 2002 when released from care by Dr. Szewczyk; and believes that any care to the low back and to the right hip subsequent to October of 2002 was not medically causally related to the work injury. Dr. Nogalski later clarifies that it is his opinion that “really only seeing some subjective complaints of pain and no objective findings, there’s nothing in concrete here that identifies a specific injury or medical causative link in this matter”; and further acknowledges that he believes that the findings on MRI taken 4/6/04 were developments over the course of time, and not the result of a traumatic event. Dr. Nogalski notes that disc desiccation, arthritic changes leading to facet arthropathy, and congenital narrowing of the spinal canal are conditions you have innately, and are all common findings in a man the age of the claimant.

The claimant has the burden of proving all the essential elements of the claim for compensation. Proof as to medical causation need not be by absolute certainty, but rather by a reasonable probability. “Probable” means founded on reason and experience which inclines the mind to believe but leaves room for doubt. Tate v. Southwestern Bell Telephone Co., 715 S.W.2d 326, 329 (Mo.App. 1986). “Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause”. Brundige v. Boehringer Ingelheim, 812 S.W. 2d 200, 202 (Mo.App. 1991); McGrath v. Satellite Sprinkler Systems, Inc., 877 S.W.2d 704, 708 (Mo.App. E.D. 1994). The ultimate importance of expert testimony is to be determined from the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. Choate v. Lily Tulip, Inc., 809 S.W. 2d 102, 105 (Mo.App.1991). “A medical expert’s opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence.” (citations omitted) Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 904 (Mo.App. 1990).

The claimant is obliged to show that trauma suffered to the wrists when struck and knocked down by the bucket was a substantial factor in the development of a bilateral carpal tunnel syndrome. Drs. Ollinger and Poetz disagree as to whether the traumatic event on 8/14/02 can be the cause of the bilateral carpal tunnel. Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. Hawkins v. Emerson Electric Co., 676 S.W.2d 872, 877 (Mo. App.1984). “A medical expert’s opinion must be supported by facts and reasons proven by competent evidence that will give the opinion probative force to be substantial evidence.” Silman v. Montgomery & Associates, 891 S.W.2d 173, 176 (Mo. App. 1995); Pippin v. St. Joe Minerals Corp., 799 S.W.2d 898, 903 (Mo. App. 1990).

The explanation of Dr. Ollinger is found credible as to the length of time in which a traumatically induced carpal tunnel syndrome will become symptomatic and will manifest. The explanation by Dr. Ollinger is also found persuasive when he states that a carpal tunnel syndrome will not manifest from a traumatic event resulting in an injury as slight as that showing in the medical records in this matter, a thumb contusion that resolved within a few weeks. The testimony of Mr. Wilson as to a chronic condition of ill being in his hands after 8/14/02 notwithstanding, the facts reveal that the early treatment records suggest that thumb numbness resolved, and there is nothing in any of the records to suggest that Mr. Wilson made any complaint or suffered any complaint as to the use or function of his hands while working at

Ameren UE from August of 2002 to February of 2004; he missed no time from work after his accident on 8/14/02; he was able to work as a hog breeder on a hog farm, moving 500 to 600 pound hogs from pen to pen, for approximately a year after leaving his employment with Ameren UE; and was not diagnosed with carpal tunnel syndrome until early 2005.

In contrast, the expert medical opinion of Dr. Poetz as to causation is a bare conclusion without analysis as to medical causal relationship as it relates to the history of complaint and the medical records. Dr. Poetz fails to explain how the mechanics of injury on 8/14/02 can support his conclusion as to causal relationship between bilateral carpal tunnel syndrome and the traumatic injury suffered by Mr. Wilson.

The expert medical opinion of Dr. Ollinger is supported by the evidence, and is more credible than that of Dr. Poetz. The claimant has failed to persuade that the traumatic injury suffered on 8/14/02 was a substantial factor resulting in a condition known as carpal tunnel syndrome. The issues as to medical causation and permanent partial disability as they relate to a bilateral carpal tunnel syndrome are found in favor of the employer and insurer, and no compensation is awarded for permanent injury to the upper extremities at the wrists.

Drs. Poetz and Nogalski disagree as to medical causal relationship between the work injury on 8/14/02 and the complaints of ill being expressed by Mr. Wilson at the low back and at the right hip. Dr. Nogalski believes that all of the objective findings as to the low back and right hip support the conclusion that the conditions in the low back and right hip were preexisting the injury on 8/14/02, and that the only support for a causal connection are the subjective complaints of Mr. Wilson. A review of the records indicates that the claimant was making no right hip complaints immediately after his injury and while treating with Dr. Szewczyk from August to October of 2002, and was diagnosed with, among others, thoracolumbar strain. Claimant acknowledges that he missed no time from work on account of his complaints; was not put on any formal restrictions as to the use of his back; and was not provided with any medication for his pain complaints. Dr. Szewczyk concluded in October of 2002 that the thoracolumbar condition had resolved, but with ongoing complaint of back soreness.

Claimant did not seek further treatment for his back condition, and continued to work, and the first notation as to medical evaluation of a low back complaint appears in early April of 2004, some four months after the claimant had separated from employment with Ameren UE. Dr. Nogalski concludes that the MRI finding of the low back shows all manner of conditions in the low back that are not traumatically induced, but rather appear congenitally or over the course of time. The low back complaints made by Mr. Wilson are nonetheless credible, and are in no way to be somehow discredited simply because one of the medical experts believes they are related to a preexisting condition.

The pain complaints of Mr. Wilson are supported by a medical history that includes a series of three epidural steroid injections provided in 2005 to help relieve his pain complaints as to the low back and right lower extremity. Proof as to medical causal relationship and permanency is made a more difficult proposition by the similar conclusion of Drs. Poetz and Nogalski that the claimant suffers from a preexisting condition in both the low back and right hip. Dr. Poetz opines that the claimant suffers permanent and partial disability in the right hip and back that predated the work injury on 8/14/02.

A claimant must not only show causation between the accident and the injury but also that a disability resulted and the extent of such disability. Smith v. National Lead Co., 228 S.W.2d 407, 412[4] (Mo.App.1950), as cited in Goleman v. MCI Transporters, 844 S.W.2d 463, 465 (Mo. App. W.D. 1992). While proof of cause of injury is sufficiently made on reasonable probability, proof of permanency of injury requires reasonable certainty. Griggs v. A.B. Chance Company, 503 S.W.2d 697 (Mo.App.). In cases where the claimant suffers from a prior permanent partial disability, or in complex issues of medical causation, expert medical opinion is necessary to meet the proof standard. Plaster v. Dayco Corp., 760 S.W.2d 911, 913 (Mo.App. 1988).

Dr. Nogalski provides credible expert testimony to persuade that the claimant suffered objective signs of conditions in the low back as shown by MRI that were preexisting the involved work injury. It is also evident that Dr. Nogalski is correct in concluding that the claimant suffered a preexisting arthritic condition in the right hip that was symptomatic, and that was further acknowledged by Dr. Poetz to be permanently disabling. The records indicate that the claimant was complaining of right hip pain to Dr. King as early as May of 2002, date of onset two months prior to the office visit on 5/17/02. An x-ray taken of the right hip on 5/17/02 suggested right hip joint degeneration. Further diagnostics of the right hip were discussed but were put off until 12/30/02, when a second x-ray of the right hip revealed degenerative change, noted to be possibly degenerative or posttraumatic in nature, with no acute fracture, dislocation, or subluxation noted. Just as in the issue of medical causation with respect to the diagnosis of carpal tunnel syndrome, the

conclusions reached by Dr. Poetz as to diagnosis, causation, and permanency with respect to the low back and right hip are largely bare conclusions without objective medical findings or medical records to support them. Dr. Poetz believes the right hip condition to be both preexisting and permanently disabling, a conclusion that is supported by the medical records in the matter. For the claimant to recover benefits, the evidence as a whole must persuade that the opinion of Dr. Poetz is more credible than that of Dr. Nogalski as relates to medical causal relationship and permanent disability regarding the 8/14/02 injury and the right hip and the low back complaints of ill being.

Dr. Poetz includes in his diagnosis a preexisting lumbar degenerative disease and spinal stenosis, and further concludes that Mr. Wilson suffers from a five percent permanent partial disability of the lumbar spine that is preexisting. He further concludes that the claimant suffers a 20% permanent partial disability of the lumbar spine "directly resultant from the August 14, 2002 work related injury"( page 7 of the report of Dr. Poetz, Employee's Exhibit 2 to Claimant's Exhibit A).

The EMG/NCV performed on 6/28/05 is the only apparent diagnostic evaluation of the low back done post the injury on 8/14/02, other than the MRI performed on 4/6/04. That study was taken in response to low back, right buttock, and leg pain complaints, and the study was found to be normal. In advance of the study, in a written record dated 6/16/05, Dr. Miles notes "Mr. Wilson has a couple of years of gradually worsening low back issues. He describes two incidents where he was struck by a backhoe most recently in 2002 which have resulted in his symptoms."

With regard to the right hip, the claimant had osteoarthritis bilaterally right worse than left, and had arthroplasty performed by Dr. Havey on 6/18/04, some five or six months after leaving his employment with Ameren UE, and perhaps some three or so months into his employment as a hog breeder. In his follow up note dated September 14, 2004, Dr. Havey speculates that the claimant may have had a preexisting arthritis in both hips that might have been exacerbated when struck by the backhoe in August of 2002. It is also true that in his note dated 5/24/04, Dr. Havey supposed that the claimant was unable to work, and believed that at that time the claimant was working for Ameren UE. Not only was Dr. Havey under a misconception as to the claimant's work history, but Dr. Poetz, who met with Mr. Wilson on the one occasion on 12/18/06, acknowledged at page 27 of his deposition that he was aware that the claimant was currently employed as a truck driver, but that he did not know what other job activities the claimant had between the time he left his job at Ameren UE in February of 2004 and at the time he saw him. In other words, Dr. Poetz was unaware of the claimant's history of working as a hog breeder for approximately a year or so beginning around March of 2004, or as to when the claimant began his employment as a truck driver. Dr. Poetz further acknowledged that his review did not include the medical records of Dr. King (Employer and Insurer's Exhibit 4) or the medical records of Columbia Orthopaedic Group (Claimant's Exhibit D, includes the 2005 records of Dr. Miles as to NCV/EMG, treatment recommendations as to low back).

From all of the evidence, the expert medical opinion of Dr. Nogalski as to the lack of a medical causal relationship between the work in jury on 8/14/02 and the claimant's ongoing complaints of ill being in the low back and in the right hip are deemed to be more credible than that of Dr. Poetz. Dr. Nogalski has a better grasp than does Dr. Poetz as to the claimant's work history and as to his medical history, which means he has a more solid foundation for his conclusion as to both medical causation and as to permanent partial disability. His conclusions are based on an understanding of the facts of the matter, and his conclusions appear to be supported by those facts. The claimant has failed to persuade, with a reasonable degree of probability, that the work injury on 8/14/02 was a substantial factor in a resultant condition of ill being in the right hip and low back. Claimant has further failed to persuade, by a reasonable certainty, that he suffered a compensable permanent disability to his right hip, or to his low back, as a result of his injury by accident on 8/14/02. The claim for compensation as to the right hip and low back is denied.

The only other compensable complaint supported by the proof concerns the chest wall injury suffered by the claimant. Both Drs. Poetz and Nogalski believe the claimant exhibits symptoms as to his chest that are permanent and disabling, but they disagree as to diagnosis. Dr. Poetz opines that the claimant suffers from chest wall contusion with residual costochondritis, while Dr. Nogalski does not believe there are any objective findings of costochondritis, but nonetheless concludes that the claimant has suffered a 1 to 2% permanent partial disability, based on his subjective complaints.

From all of the evidence, as a result of the involved work injury Mr. Wilson is found to have sustained a chest wall contusion with ongoing complaints of ill being that are permanently disabling. The employer is found liable for a permanent partial disability of 2% of the body as a whole, referable to the chest wall. Given the stipulated rate maximum rate of \$340.12 per week for ppd, the amount due is for 8 weeks, or a total of \$2,720.96.

#### LIABILITY OF THE SECOND INJURY FUND

At the request of the claimant, the claim as against the State Treasurer, as custodian of the Second Injury Fund, is to remain open.

#### ATTORNEY'S FEES

This award is subject to a lien in favor of Jack J. Adams, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

#### FINAL AWARD

This award is a final determination of the issues raised at hearing on this claim for workers' compensation benefits, and for that reason is believed to be ripe for appeal under the act. This award is further subject to interest as provided by law.

Date: February 2, 2009

Made by: /s/ KEVIN DINWIDDIE  
KEVIN DINWIDDIE  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

/s/ PETER LYSKOWSKI  
Peter Lyskowski  
Acting Director  
Division of Workers' Compensation