BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JUAN CAYERO, Claimant, v. J. R. SIMPLOT COMPANY, Self-Insured Employer, Defendant.	)	**IC 2003-003313** **2004-012155** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed June 14, 2010

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on February 18, 2010. Claimant was present and represented by Darin G. Monroe of Boise. Daniel A. Miller, also of Boise, represented the self-insured Employer. Rose Marie Arrubarrena interpreted.[1] No post-hearing depositions were taken. The parties submitted post-hearing briefs and this matter came under advisement on May 5, 2010.

ISSUES

By agreement of the parties, the issues to be decided as the result of the hearing are:

1. Whether Claimant is entitled to a referral to a physician in Utah.[2]

2. Whether Claimant is entitled to an award of attorney fees for Employer's failure to honor the above-mentioned referral.

[1] Claimant only used Ms. Arrubarrena's services for a short time then completed his testimony in English.

[2] Although not found in the record, the parties in their post-hearing briefing refer to the physician as Donald A. Coleman, M.D., an orthopedic surgeon at the University of Utah.

CONTENTIONS OF THE PARTIES

Claimant contends that he should be allowed to see Donald A. Coleman, M.D., an orthopedic surgeon at the University of Utah on a referral from his treating physician, Michael R. McMartin, M.D. Claimant suffered repetitive trauma to his left elbow while operating a bull-dozer for Employer at its Grandview facility. Employer accepted the claim and paid for subsequent surgeries. Claimant then developed similar symptoms in his right upper-extremity. Again, Employer accepted the claim. Claimant eventually underwent another surgery followed by physical therapy. He was referred to Dr. McMartin for pain management. Dr. McMartin referred Claimant to a physician agreed to by Employer, but that physician would not see Claimant because he was a partner of Claimant's treating surgeon. Dr. McMartin then referred Claimant to Dr. Coleman in Utah; Employer refuses to honor this referral and herein lies the problem. Employer should be assessed attorney fees for not honoring the referral.

Employer contends that the requested referral is unreasonable. Claimant has supplied the Commission with nothing regarding who Dr. Coleman is, or what he is supposed to be able to do for Claimant, who has seen four orthopedic surgeons in Boise, three of whom (including Claimant's treating surgeon) claim there is nothing left to be done orthopedically/surgically for Claimant. Dr. McMartin is frustrated with Claimant and made the referral at Claimant's request. Dr. McMartin issued a PPI rating in 2006, yet continued to treat Claimant without noticeable improvement. In early 2007, Dr. McMartin referred Claimant to an upper extremity specialist who opined that Claimant was not a surgical candidate. Later that year, Claimant began to ask Dr. McMartin for a referral to a physician at the University of Utah. In the interim, Claimant saw yet another local orthopedic surgeon who also advised against further surgical intervention. Even though Claimant knows nothing about Dr. Coleman, Dr. McMartin nonetheless made the

referral at Claimant's request. As stated by Employer's counsel, "It is time to put a stop to this madness." Employer's Brief, p. 10.

Claimant responds that Employer must think another referral is reasonable because they authorized the referral to a partner of Claimant's treating surgeon, who refused to see Claimant due to that association. Therefore, a referral to another specialist is equally reasonable.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant presented at the hearing.
2. Claimant's Exhibits 1-2 admitted at the hearing.
3. Employer's Exhibits 1-12 admitted at the hearing.

After having considered all the above evidence and briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

Claimant's hearing testimony:

1. Claimant was 64 years of age and resided in Meridian at the time of the hearing. He was born in Spain and came to the United States in 1970. Claimant has a "green card."

2. Claimant began working for Employer in 1982 at its Grandview facility. He had no problems with his bilateral arms, wrists, or elbows before 2002. At that time, Claimant developed "tennis elbow" in his left elbow. Employer accepted the claim. Claimant eventually began treating with Steven B. Care, M.D., an orthopedic surgeon. Dr. Care performed a "nerve" surgery (radial tunnel decompression) on Claimant's left arm; Claimant got worse. Claimant testified that a post-surgery MRI revealed a "broken tendon." A second surgery by Dr. Care produced good results and stopped the cramping in Claimant's fingers.

3. Not long after Claimant's second surgery, he began to experience pain in his right arm similar to what he had experienced in his left arm while "prodding" cattle into a branding chute. Again, Employer accepted the claim and again Dr. Care performed a surgery; however, as of the time of the hearing, Claimant was still experiencing increasing "whole arm" pain depending on his activity level.

4. Claimant obtained a second opinion from C. Scott Humphrey, M.D., an orthopedic surgeon. Claimant testified that Dr. Humphrey told him the problem was in his neck and shoulders. Claimant disagrees with Dr. Humphrey's assessment.

5. Claimant also saw Roman Schwartsman, M.D., an orthopedic surgeon. Claimant testified that Dr. Schwartsman recommended EMG studies and an MRI. Claimant further testified that Dr. Schwartsman wanted to do surgery on Claimant's left arm, not his right.

6. At the time of the hearing, Claimant's treatment regimen consisted solely of pain medications and pain management.

7. Claimant wanted a referral from his pain management physician, Dr. McMartin, to Dr. Curtin, who Claimant saw on a television news program.[3]

8. Claimant then wanted a referral to Dr. Coleman at the University of Utah. Claimant learned of Dr. Coleman from staff at an eye clinic at the University of Utah where Claimant had eye surgery. He informed Dr. McMartin that he wanted a referral to Dr. Coleman.

9. Claimant's right arm has gotten worse after Dr. Care's surgery. Claimant believes another surgery will help him. Claimant does not know anything about Dr. Coleman. He called his office once and talked to Dr. Coleman's staff; he has never talked to or met Dr. Coleman.

[3] Dr. McMartin made the referral, but Dr. Curtin would not see Claimant because Claimant's treating surgeon, Dr. Care, was Dr. Curtin's partner.

The medical evidence:

10. A First Report of Injury or Illness was prepared on March 4, 2003, with a date of injury of December 20, 2002. The report indicates that, "Operate Cat all day for past 4-5 years (on same Cat) using L. hand to steer equipment. Noticed increased pain and then fingers began to go numb." Employer's Exhibit 1, p. 1.

11. Claimant first sought medical treatment for his left elbow on March 19, 2003, when he presented to Richard E. Moore, M.D., an orthopedic surgeon. He was diagnosed with lateral epicondylitis and given pain medication and a sling. Claimant underwent a regimen of injections and physical therapy. On April 8, 2003, Dr. Moore indicated that a nerve conduction study showed no evidence of a peripheral neuropathy or entrapment neuropathy in the left upper extremity. Dr. Moore recommended continued physical therapy and released Claimant to return to work as tolerated. Claimant was also treating with Michael McMartin, M.D., a pain specialist.

12. On June 6, 2003, Claimant saw Dr. Moore's partner William Linder, M.D., who thought that Claimant's lateral epicondylitis had been adequately treated but that Claimant may have developed radial tunnel syndrome. Dr. Linder ordered an MRI and EMG studies specifically targeting the radial nerve function.

13. On September 29, 2003, Claimant began treating with Steven B. Care, M.D., an orthopedic surgeon. Upon examination and review of x-rays, Dr. Care diagnosed radial tunnel syndrome verses posterior interosseous nerve symptoms. As conservative care had failed to alleviate Claimant's symptoms, Dr. Care recommended an outpatient radial tunnel decompression. Because Claimant was worried about continuing with his job without pain relief, he agreed to the procedure which was accomplished on November 18, 2003.

14. In a January 14, 2004, follow-up visit, Claimant informed Dr. Care that his original complaints had completely resolved. Dr. Care released Claimant to return to his regular employment.

15. By March 3, 2004, Claimant was showing signs of lateral epicondylitis in his left elbow although his radial tunnel syndrome remained resolved. Dr. Care provided a steroid injection and returned Claimant to work without "formal" restrictions. He indicated that Claimant should undergo a program of stretching/strengthening that Dr. Care thought should last at least six months, at which time he should be at MMI.

16. Claimant continued to treat conservatively with stretching/strengthening, steroid injections (3), and anti-inflammatories. In a June 16, 2004, examination, Dr. Care changed his diagnosis from lateral epicondylitis to: Progressive lateral epicondylitis with progression to common extensor origin avulsion and avulsion of the associated lateral ulnar collateral ligament. Dr. Care described this condition as a potentially destabilizing injury with surgery as the only viable option. Claimant was released to return to work with a ten-pound lifting restriction pending surgery.

17. On August 3, 2004, Dr. Care performed a lateral epicondylar debridement and lateral ulnar collateral ligament repair.

18 In a September 15, 2004, follow-up, Claimant was complaining of poor range of motion in his elbow; however, Dr. Care was able to gain full range of motion and full flexion and extension of the elbow on testing. Dr. Care noted that Claimant's left elbow overall appeared to be "faring well" post-surgery. Of interest, Claimant informed Dr. Care that he was beginning to develop similar symptoms in his right arm and wanted it looked at as a workers' compensation claim. Dr. Care explained to Claimant that "wear and tear" is not a workers' compensation issue

and Claimant had told him that he only used his left hand in a repetitive manner. Dr. Care refused to treat the right arm as a workers' compensation claim and suggested that Claimant talk further with Employer's TPA. Dr. Care sent Claimant to physical therapy.

19. In a September 23, 2004, follow-up visit, Claimant informed Dr. Care that operating the bulldozer actually required the use of both hands. Dr. Care noted that Claimant made a "strong case" that his suspected right cubital tunnel syndrome was work-related. Dr. Care took Claimant off work, ordered an EMG, and provided him with a brace.

20. In an October 25, 2004, letter to Employer's TPA, Dr. Care indicated that he believed Claimant's left wrist pain wrist pain was a part of his forearm axis injury and was, therefore, work-related. Dr. Care requested authority to treat this condition. Dr. Care further opined that Claimant's right cubital tunnel syndrome was work-related and he would treat that condition under a separate claim. He released Claimant to light work and again ordered EMG studies which revealed an ulnar neuropathy at the right elbow of moderate severity.

21. In a December 15, 2004, follow-up visit, Dr. Care noted, "Juan now presents for further evaluation and management of his right elbow. He also notes parenthetically some residual symptoms in his left wrist radiating to his middle finger. He is not concerned of that today, but I specifically asked him about other symptoms due to the fact that he tends to focus on a single problem at a time and has historically repeatedly come in complaining about a single problem and then subsequently begun complaining about another on further evaluation." Employer's Exhibit 7, p. 92.

22. Conservative care was not providing Claimant any relief, so Dr. Care brought Claimant to surgery on December 28, 2004. He performed a right ulnar nerve decompression

and anterior transposition. Dr. Care's post-surgery diagnosis was cubital tunnel syndrome. Claimant was then referred to physical therapy.

23. Claimant's right upper extremity symptoms failed to significantly improve post-surgery and after months of physical therapy. On May 27, 2005, Dr. Care noted that contrary to the physical therapy notes that indicated Claimant was continuing to gain strength, Claimant was complaining of increased pain in his right upper extremity. As Claimant's arm appeared mechanically sound, Dr. Care referred Claimant to pain specialist Michael McMartin, M.D., with the idea of getting Claimant's pain under control. Dr. McMartin performed Claimant's previous electromyogram and nerve conduction studies. Dr. Care continued Claimant's occupational therapy.

24. Claimant saw Dr. McMartin on September 27, 2005. His chief complaint was right regional elbow pain that interferes with his work and sleeping. Dr. McMartin diagnosed chronic recurrent right regional elbow pain or medial epicondylitis/soft tissue pain syndrome, although formal neurologic examination revealed an essentially normal ulnar nerve. Claimant's left elbow pain had returned to baseline. Dr. McMartin ordered a right elbow MRI, prescribed medications, and modified his return to work release.

25. Claimant returned to Dr. Care on August 1, 2005, at which time he found Claimant to be medically stable. However, Claimant was complaining of his "work situation" and Dr. Care noted, "Juan appears to feel that I should be responsible for policing employer compliance with his job descriptions, and I have emphasized that I'm not in a position to take such responsibility." Employer's Exhibit 7, p. 30. Claimant indicated to Dr. Care that he would be seeking a second opinion. Claimant was to return to Dr. Care as needed.

26. On March 3, 2006, Dr. McMartin noted, "Despite advanced medication trial of Celebrex and Darvocet for pain control, he states his bilateral elbow and extensor forearm pains persist. He continues to be very limited in his tolerance for activity." Employer's Exhibit 11, p. 216. Dr. McMartin diagnosed: 1. Chronic recurrent right regional elbow pain with MRI evidence of chronic ulnar neuritis, tendinopathy, and high grade partial tearing involving the common extensor tendons adjacent to the lateral humeral epicondyle. 2. Chronic left medial epicondylitis/neuritis. Dr. McMartin termed Claimant's prognosis as "poor." *Id*.

27. Dr. McMartin found Claimant to be at MMI on March 3. He utilized the 5th edition of the *AMA Guides to the Evaluation of Permanent Impairment* to assign a 23% whole person PPI rating without apportionment. Dr. McMartin noted that Claimant was permanently and totally disabled from work.

28. In spite of being at MMI, Dr. McMartin's office notes regarding follow-up visits on September 12 and December 11, 2006, reveal that Claimant continued to complain of increasingly severe right elbow pain. His left-sided symptoms were stable and of minimal concern. Dr. McMartin noted, "He is a credible historian and his complaints of increased intense right elbow pain are very concerning." *Id*., p. 209. Dr. McMartin ordered another right upper extremity MRI that revealed chronic lateral and medial epicondylitis.

29. In a March 14, 2007, follow-up, Claimant requested a second opinion from a specialist. Dr. McMartin noted,

> "Despite multiple medication trials, we have not been able to effectively control Mr. Cayeros's **subjective** pain. He continues to evidence **profound illness conviction** and a sense that his condition is worsening. We have completed **multiple diagnostic tests** confirming true pathology specific to the right elbow. At this time, I believe a second opinion is indicated **to address Mr. Cayero's anxiety that "we have missed something"** or that there is an alternative intervention plan that could potentially improve his situation."

Id., p. 202. Emphases added.

30. Dr. McMartin referred Claimant to C. Scott Humphrey, M.D., a specialist in upper extremity orthopedics.

31. Claimant saw Dr. Humphrey on May 15, 2007. Although Claimant was adamant that there was a surgical solution to his problems, Dr. Humphreys informed Dr. McMartin that ". . . I explained to [Claimant] that unfortunately I did not have anything to offer him. I am unable to attribute his complaints to any specific disorder that has not already been addressed by physicians who have previously seen [Claimant]. **I would recommend continued conservative care rather than any further surgeries at this point**." Employer's Exhibit 9, p. 156. Emphasis added.

32. On June 1, 2007, Dr. McMartin noted, "Mr. Cayero is **absolute in his concern that we have yet to make the proper diagnosis** for his perceived progressive deterioration and chronic complex pain syndrome. I highly recommend that we complete this workup with MRI analysis and orthopedic specialist review out of state." Employer's Exhibit 11, p. 198. Emphasis added.

33. Claimant returned to Dr. McMartin on July 10, 2007, to review his MRI results. His left elbow MRI was "unrevealing." His right elbow MRI revealed tendinosis/tendinitis. Dr. McMartin requested a right shoulder MRI and noted, "Mr. Cayero has also requested a second opinion from the University of Utah. He will contact our office with the name of a shoulder specialist given to him by a physician friend." *Id*., p. 195.

34. In an October 22, 2007, office note, Dr. McMartin indicated that Claimant would be seeing Roman Schwartsman, M.D., for another second opinion regarding his upper extremity problems. It is not known how or why Dr. Schwartsman was selected for this purpose.

35. Claimant first saw Dr. Schwartsman on November 19, 2007. Claimant was complaining of bilateral elbow pain, right worse than left, as well as numbness in both shoulders. Dr. Schwartsman diagnosed bilateral elbow derangement and ordered a right elbow MRI. Dr. Schwartsman also ordered EMG studies of Claimant's upper extremities to further explore the numbness that ". . . I am at a loss to explain." Employer's Exhibit 10, p. 176.

36. Claimant returned to Dr. Schwartsman on February 5, 2008, with ". . . clinically evident ulnar neuropathy in the right arm." *Id*., p. 174. When tracing the transposed ulnar nerve, Dr. Schwartsman was able to determine that nerve to be the source of Claimant's right arm pain: "The patient presents with a clear well anatomically delineated pattern of pain." *Id*. Dr. Schwartsman indicated that he would like to discuss the surgery performed by Dr. Care with him (Dr. Care) before recommending any further surgical intervention. Dr. Schwartsman expressed concern that, ". . . **a further release of the ulnar nerve following the transposition may generate more scar tissue and may actually cause him more problems than he is currently having**." *Id*. Emphasis added.

37. In a January 17, 2008, follow-up, Dr. Schwartsman noted that a recent right elbow MRI revealed a chronic tendinopathy unchanged from 2005. EMG studies showed left ulnar neuropathy at the elbow without axonal involvement. Claimant informed Dr. Schwartsman that the pain in his left arm is "tolerable" and no surgery was recommended for this condition. The right ulnar nerve showed no evidence of acute neuropathy. Even though radiographically Claimant had a resolution of symptoms post-ulnar nerve transposition, clinically Claimant's symptoms persisted. Dr. Schwartsman opined that if Claimant could obtain relief from his right upper extremity tendinopathy, his symptoms would become tolerable.

38. Dr. Schwartsman last saw Claimant on March 13, 2008, at which time he noted:

> This is a 62-year-old with right ulnar neuropathy following a release transposition. The patient continues to have pain along the ulnar nerve distribution. He is back today for followup [sic]. In the interim I have done a literature review on repeat ulnar nerve transpositions. **All the findings point to the fact that a repeat transposition will be followed [sic] fraught with complications and is unlikely [sic – to] produce any meaningful results for the patient.** In fact the risk of devitalizing the nerve in the secondary transposition is rather high and would risk persistent pain and ulnar crawling with the devitalized nerve.

Employer's Exhibit 10, p. 170. Emphasis added.

39. Regarding Claimant's complaints of right distal biceps and brachialis tendinopathy, Dr. Schwartsman did not recommend any intervention and knows of no surgical procedure for those complaints that would benefit Claimant.

40. Claimant returned to Dr. McMartin on October 17, 2008, with continued bilateral elbow complaints, right worse than left. Dr. McMartin noted, "At this time, I have no new recommendations for further intervention or diagnostics." Employer's Exhibit 11, p. 179. Dr. McMartin further noted:

> ADDENDUM: At the end of my appointment with Mr. Cayero, he has recommended a referral to Dr. Curtain [sic-Curtin]. I explained to him that Dr. Care has been his attending orthopedic specialist. His family apparently heard of Dr. Curtain's [sic] expertise through the media and other friends and very much would like the opportunity to meet with Dr. Curtain [sic]. I will proceed with a referral **as requested by Mr. Cayero**.

Id. Emphasis added.

41. When Employer failed to honor Dr. McMartin's referral to Dr. Curtin, Claimant requested a hearing on that issue; the hearing was set for May 15, 2009. On May 6, 2009, Employer relented and authorized the referral. Unfortunately, Dr. Curtin refused to see Claimant because he was Dr. Care's partner.

42. Claimant then learned of Dr. Coleman, who ostensibly specializes in upper extremity problems and requested a referral to him from Dr. McMartin. In an August 18, 2009, office note, Dr. McMartin reported:

> History of chronic bilateral upper extremity pain syndrome. Today's examination is most consistent with a myofascial pain disorder. I see no evidence of any medial or lateral epicondylitis abnormality. **Juan is very focused on pursuing an independent medical examination. Once again, I medically support this pursuit.**

Id. Emphases added.

DISCUSSSION AND FURTHER FINDINGS

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a reasonable time thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See, Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989). A physician's oral testimony is not required in every case, but his or her medical records may be utilized to provide "medical testimony." *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

Idaho Code 72-432(4)(a) provides that an attending physician may arrange for consultation, referral, or specialized care without permission of the employer.

The pivotal issue in this matter is whether Dr. McMartin's "referral" to Dr. Coleman is reasonable. For the following reasons, the Referee finds that it is not.

43. Dr. McMartin is Claimant's attending physician regarding pain management. There is no allegation that Dr. McMartin's treatment for Claimant's chronic upper extremity pain had been unreasonable. Three physicians, Drs. Care, Schwartsman, and McMartin have opined that further surgical intervention would not be in Claimant's best interest. Nonetheless, Claimant

appears to be singularly focused on finding a physician willing to "fix" him with surgery and Dr. McMartin appears willing to sign off, without comment, on as many referrals as Claimant suggests to him. That is not reasonable.

44. The Referee is familiar with *Jones v. Star Falls Transportation, LLC*, 2006 IIC 0520, cited by Claimant to support his contention that claimant-initiated referrals are recognized by the Commission. However, the convoluted fact pattern existing in *Jones* renders that decision of little precedential value under the facts of this case. Here, it is evident that Dr. McMartin's "referral" to Dr. Coleman was simply to honor Claimant's request, rather than an independent exercise of medical judgment. There is nothing in the record to indicate that Dr. McMartin is familiar with Dr. Coleman or that he even knows what Dr. Coleman's specialty is. If Dr. McMartin does not believe Claimant is a surgical candidate, why would he refer him to a surgeon?

45. Dr. McMartin found Claimant to be at MMI on March 3, 2006, and assigned an impairment rating. Claimant's original accident was in December 2002, almost eight years ago. While Claimant may be afflicted with chronic pain, Employer has provided reasonable treatment for that condition and will likely continue to do so in the form of pain medications. No physician has recommended a surgical "fix" for Claimant's condition, including upper-extremity specialist Dr. Humphrey to whom Claimant was sent for a second opinion. There is nothing in this record to suggest that Dr. Humphrey is any less qualified to render expert opinions than Dr. Coleman (about whom we know nothing).

46. Claimant argues that because Employer eventually honored the referral from Dr. McMartin to Dr. Curtin, it also determined that the referral was reasonable and, therefore, should adopt the same position here. The Referee disagrees. Employer's reasons for honoring the

referral to Dr. Curtin are not reflected in the record and are likely manifold. Quite possibly, Employer did not believe that a referral to Dr. Curtin was reasonable, but acceded to the same because it was a local and relatively inexpensive referral. Regardless, Employer's agreement to this referral provides little, if any, information relevant to determining the reasonableness of the subsequent referral to Dr. Coleman. The reasonableness of that referral must be judged on its own peculiar facts. The Referee also disagrees that Employer denied the referral without medical evidence. Employer could certainly rely on the opinions of Drs. Care, Schwartsman, and McMartin regarding the lack of necessity for surgical intervention.

47. Dr. McMartin, in his referrals to Drs. Humphrey, Curtin and Dr. Coleman, did so merely to accommodate Claimant. He did not indicate why the referrals were necessary or required. Although armed with the opinions of two surgeons (and his own opinion as a physiatrist) that no further surgeries were indicated (and in fact were contraindicated), it is unreasonable for Dr. McMartin to make a referral to yet another surgeon without explanation. Of course, Claimant can pursue whatever course of treatment he believes will "fix" him; just not on Employer's dime. Also, there is no reason why Employer and Claimant cannot agree on another local referral; however, the Referee will not recommend that the Commission order such.

48. Based on the foregoing, Claimant is not entitled to an award of attorney fees.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that Dr. McMartin's referral to Dr. Coleman is reasonable.

2. Claimant is not entitled to an award of attorney fees.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this __7th___ day of June, 2010.

INDUSTRIAL COMMISSION

__/s/_____
Michael E. Powers, Referee

ATTEST:

__/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __14th____ day of __June____, 2010, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

DARIN G MONROE
PO BOX 50313
BOISE ID 83705

DANIEL A MILLER
401 W FRONT ST STE 401
BOISE ID 83702

Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JUAN CAYERO, Claimant, v. J. R. SIMPLOT COMPANY, Self-Insured Employer, Defendant.	)	**IC 2003-003313** **2004-012155** **ORDER** Filed June 14, 2010

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove that Dr. McMartin's referral to Dr. Coleman is reasonable.

2. Claimant is not entitled to an award of attorney fees.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __14th____ day of __June___, 2010.

INDUSTRIAL COMMISSION

__/s/_____
R.D. Maynard, Chairman

__/s/_____
Thomas E. Limbaugh, Commissioner

_____
Thomas P. Baskin, Commissioner

ATTEST:
_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _14th__ day of __June___ 2010, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

DARIN G MONROE
PO BOX 50313
BOISE ID 83705

DANIEL A MILLER
401 W FRONT ST STE 401
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ge _Gina Espinosa_