BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NICANOR SANDOVAL, Claimant, v. PLEXUS CORP., Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2010-009077** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** AUGUST 10, 2011

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing in Boise on January 19, 2011. Claimant, Nicanor Sandoval, was represented by Robert A. Nauman, and Defendants were represented by W. Scott Wigle. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on June 7, 2011.

ISSUES

At the hearing the parties stipulated to the following issues to be decided by the Commission:

1. Whether Claimant sustained an injury from an accident arising out of and in the course of employment;
2. Whether and to what extent Claimant is entitled to:

a. Reasonable and necessary medical care as provided for by Idaho Code § 72-432; and

b. Temporary partial and/or temporary total disability (TPD/TTD) benefits; and

3. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804.

Issues concerning permanent partial impairment and permanent partial disability were reserved by the parties to be tried, if necessary, at a later date.

CONTENTIONS OF THE PARTIES

There is no dispute that Claimant suffered a herniated disc at L4-L5, nor that this injury required surgical intervention, nor that this injury is consistent with lifting a 40-50 pound box as well as many other less strenuous activities.

Claimant contends that he herniated his disc at work on March 24, 2010 when he lifted a 40-50 pound box, possibly containing DragonWave parts, onto a cart. He seeks an order determining that his injury is compensable and that he is entitled to benefits for medical care and temporary permanent disability, as well as attorney fees because Defendants unreasonably denied his claim. Claimant relies upon the uncontested testimony of Paul Montalbano, M.D. to support his position.

Defendants counter that Claimant is not a credible witness. He admitted to telling elaborate lies to Employer and his coworkers in order to obtain more time off than that to which he would otherwise have been entitled, to see his girlfriend in Ottawa, Ontario, Canada. Therefore, since the accident was unwitnessed and there is evidence in the record that he was experiencing back and leg symptoms before March 24, it should be determined that Claimant has not proffered sufficient evidence to establish his injury arose out of and in the course of his employment. Defendants also cite evidence that Claimant's testimony about the details of the alleged accident was at times inconsistent and that Employer's inventory tracking system showed

no DragonWave parts in the area where he was working on the day in question.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Claimant, taken August 3, 2010;
3. The pre-hearing telephonic deposition testimony of Tricia Chase, taken January 18, 2011;
4. The testimony of Claimant, Mark Danies, Stephanie Bow and Constance Lee ("Connie") Morel taken at the January 19, 2011 hearing;
5. Claimant's Exhibits 1 through 12 admitted at the hearing;
6. Defendants' Exhibits 1 through 12 admitted at the hearing; and
7. The post-hearing deposition testimony of Paul Montalbano, M.D., taken March 9, 2011.

OBJECTIONS

All pending objections in the record are overruled.

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

FINDINGS OF FACT

1. Claimant was 29 years of age at the time of the hearing and residing in Nampa. He was a materials handler[1] for Employer[2] when, in June 2009, he injured a muscle in his back while standing on a ladder, lifting a box of "DragonWave" parts weighing 40-50 pounds. That

[1] Claimant's primary duty was to retrieve component parts from storage locations on the premises to build various items for clients, like airport body scanners. On March 24, 2010, he worked off a "pull list" identifying the parts and locations throughout the facility where they were located. The list was generated by a computer system instituted in October 2009 (five months earlier). Parts were not stored with like parts, but in random locations, tracked by scanning the labels ("license plates") on the parts containers and location identifiers. The system assigned parts to be pulled on a first-in/first-out (FIFO) basis.

[2] Employer is a large company, employing 500-600 people in a 250,000 square foot building.

injury healed. Subsequently, on March 24, 2010, Claimant reported to Tricia Chase in Employer's human resources department (HR) that he injured his back while lifting a heavy box onto a cart. The 2010 injury is the subject of this claim.

2. It is undisputed that Claimant had no relevant spine pathology before March 24, 2010. His June 2009 back muscle injury had completely healed, with no resultant impairment.

3. Claimant testified consistently that he experienced intense back pain on March 24, 2010 when he was lifting a heavy box, and that he immediately reported the incident. Claimant thought he may have "re"-injured his back, and some confusion ensued over whether to file a new claim.

4. On the same day, Ms. Chase noted that Claimant reported he injured his back lifting DragonWave parts. She believed he would not need to fill out a new accident report:

> Nic Sandoval came into HR this morning and informed me that his back was bothering him and that he wanted to go to Primary Health to have it checked out. Nic informed me that he had lifted some heavy Dragon Wave parts and thought that he had re-injured his back. Nic had a previous back injury from June 2009….I called Laura Baldock before sending Nic to Primary Health and she informed me that Nic would not need to fill out a new Accident Report but that we could use the Accident report [sic] that was originally filled out on June 23, 2009.
>
> I sent Nic to Primary Health around 11:30am [sic] on March 24, 2010.

DE 4, p. 1. Ms. Chase was not all that familiar with parts in the warehouse and there was confusion about how to process Claimant's claim given his prior injury in which he was lifting DragonWave parts. Claimant did not recall exactly what he told Ms. Chase in this regard, but acknowledged the box may have contained DragonWave parts based upon its weight, so he may have said he thought they were DragonWave parts.

5. Ms. Chase sent Claimant for treatment at Primary Health. Chart notes indicate Claimant thought he had re-injured his back because it was hurting again and he had right leg radiculopathy symptoms:

> **Reason for Appointment**
> WC. Injured back muscle 6/23/2009 while lifting 50 lb box of plates. Recently started hurting again and having tingling and shooting pain into right leg.
>
> **History of Present Illness**
> LBP/Lower Extremity:
> 28 year old male presents with c/o Low Back Pain…from an accident that happened at work last june [sic]. He states he lifted a heavy box adn [sic] twisted and had immediate low back pain. He states he was doing better but now he has pain that radiates down the leg.. [sic] c/o Hip Pain. c/o Leg Pain. c/o Acute Injury.
> Denies : Knee Pain. Ankle/foot pain. Toe pain.

DE 2a, p. 1. X-rays revealed no traumatic injury but identified disc space narrowing and end plate changes at L4-5. The note confirms, "…this condition is deemed reasonably medically work related." DE 2a, p. 2. It does not state a means of injury on March 24. Ms. Chase's contemporaneous note confirms Claimant reported onset when lifting a heavy box and Claimant's statements in this regard are consistent. Given the confusion over the June 2009 injury, including the assumption at that time that it was the primary injury, and the absence of evidence in the record that this information would have changed Claimant's treatment plan, the fact that this detail does not appear in the note does not establish that Claimant did not convey it to his medical care provider.

6. Claimant was returned to work with restrictions, Surety accepted the claim and Employer provided lighter duty work.

7. As a result of the confusion about whether to file a new claim and the absence of a key HR employee during this period, Employer did not ask Claimant to prepare a written statement until April 2, 2010. The Accident and Incident Report form that he filled out states he

hurt his back lifting a box onto a cart in the bulk warehouse. Unlike Ms. Chase's March 24 note, it does not reference DragonWave parts:

> [Claimant wrote:] Working back in the warehouse I was lifting a box from the ground and placed it on a cart. Whial [sic] I was doing this my back went out on me and felt intencse [sic] pain in my lower back.

CE 7, pp. 136-137. Claimant's description at the hearing is consistent with his earlier written statement:

> I was in the warehouse. The scanner itself had the parts for me to pick, so I went over to my area – the designated area that was on the scanner and I started lifting up some boxes and when I picked up the certain individual box, I was looking for a part that the scanner – the scanner came up with the individual part number, just the label, so when I was picking up the actual boxes to look for that label I had the cart right up against me and I would just constantly move boxes off the cart, on the cart, just so that I could search through the area. When I was lifting this individual box it – my back just shot out from underneath me and I mean I had some intense pain right then and there.

Tr., pp. 32-33.

8. Claimant's April 2, 2010 statement goes on to impart that he reported his injury to Connie Morel, his immediate supervisor (his "lead"), before heading to HR: "I then went to my lead and told them I was heading to HR to report my back was hurting again from my previous case." *Id.* at 137. At the hearing, however, Claimant explained that he *saw* Ms. Morel before going to HR, but *told* a coworker, and not Ms. Morel, about his injury. He confirmed that he made his first report of the injury to Ms. Chase in HR. Claimant also admitted he may have been mistaken about whether he saw Ms. Morel before or after he went to HR. *See* Tr., p. 37. In light of the 9-day reporting delay unattributable to Claimant and the ambiguity in Claimant's written statement as to who "them" is, the Referee finds Claimant's writing is not materially inconsistent with his hearing testimony.

9. Ms. Morel clearly recalled that Claimant did not report his injury to her before he went to HR. She remembered receiving a telephone call from Ms. Chase advising that Claimant was at HR, and becoming skeptical because he did not report it to her (Ms. Morel) first. It had been about an hour since she last saw Claimant. Claimant had returned from his first trip to the bulk warehouse, and Ms. Morel had given him a new pull list and sent him back.

10. Ms. Morel recalled that Claimant did not share any pain complaints at that time:

> Q Okay. When did you last speak to him before you heard that he was reporting an accident?
>
> A It had probably been about an hour.
>
> Q Okay. What was the conversation?
>
> A I had just released these kits into the scan gun for him to pull and I was – apologized to him, because he had been down and pulling parts in bulk most of the morning and I had just released more kits which would send him back down to bulk for more parts.
>
> Q Okay. And the next thing that occurred is you get a call from Tricia Chase – the next thing with regard to Nick Sandoval?
>
> A Right.

Tr., p. 152.

> …but he was just there talking to me. I just gave him new direction. If he had been hurt I would think that he would have said something to me.

Tr., p. 167.

11. Ms. Morel also explained at the hearing that she found Claimant's cart, empty, between the materials department, where she had the above-described conversation with Claimant, and the bulk warehouse. She took this to mean that Claimant did not go to the bulk warehouse a second time, but instead went directly to HR following their conversation. Given her assumptions, she found it suspicious that Claimant displayed no symptoms and did not report

his injury to her during their discussion. The evidence in the record, however, is insufficient to establish that Claimant did not go back to the bulk warehouse and sustain his injury *after* she provided the new assignment. Claimant explained that he left his cart in the bulk warehouse when he was injured and that he does not know what happened to it after he left. The Referee finds Ms. Morel's observations of Claimant's apparently uninjured condition credible; however, her assumption that Claimant did not incur an injury in the bulk warehouse during the next hour is not supported by the weight of the evidence in the record.

12. Ms. Morel documented her impressions of Claimant's injury in an April 7, 2010 email to Ms. Chase and Mark Danies, who supervised both herself and Claimant. This email outlined her concerns about Claimant's injury report but mentioned nothing about the empty cart she testified about at the hearing.

13. As to the events of March 24, Ms. Morel wrote (on April 7) that she had not witnessed the accident, that Claimant had not reported it to her first, and that he reported to HR because his back was really hurting:

> On March 24, 2010 I was not present in the bulk warehouse when Nic says he was injured. He did not report the accident to me at all. He first went into HR to see you. When he returned to materials he told me his back was hurting so bad he had gone in and talked to you and you were sending him to the clinic. Nic said that Hr [sic] was re-opening his old injury case.

DE 7, p. 1.

14. As to the events of April 2, Ms. Morel wrote that she reported to Jamie Nicolosi, an HR employee, that Claimant had not reported his injury to her until after he went to HR. She also wrote that she, Claimant and Ms. Nicolosi met to discuss why Claimant had listed Ms. Morel as a witness on the form. Claimant explained at the hearing that he initially thought he was supposed to enter his lead's name there, and did not know that he was supposed to just list

actual witnesses to the accident. In any event, that information was crossed out without incident. Ms. Morel also wrote that Claimant told her he was lifting DragonWave parts and that she verified they were not on his pull list on March 24:

> When Nic and I were walking back to materials I asked him about how he had gotten hurt and he told me he had been lifting 46-000490-01-01-436 (Dragonwave) parts that were very heavy. I pulled up the transaction history in WMS for that day and according to the report, he did not pull this particular part on the 24th of March.

Id.

15. Also adding to her suspicions was the fact that Ms. Morel had conducted a training session on safe lifting shortly before March 24. When she learned of Claimant's injury, she questioned him as to why he had not used the buddy system to lift the heavy box. According to Claimant, he knew the box was heavy, but it was not too heavy to lift without assistance.

16. Ms. Morel recalled overhearing Claimant discussing some back pain with coworkers once previously, but she did not seriously dispute Claimant's assertion that his relevant symptomatology was new:

> Q Okay. Did you see anything in Nick's conduct between March – March – excuse me – December 31, 2009 and March 24th, 2010, that suggested that he needed to take an entire week of off [sic] work in order to recuperate from a back strain or anything more serious?
>
> A No, I can't say that I did. Just seemed a little stiff from time to time.
>
> Q Okay. Is it your experience that a variety of your employees wind up getting a little bit stuff [sic] from time to time?
>
> A Myself included.
>
> Q As a result [sic] working in a heavy lifting environment?
>
> A Probably.

Tr., p. 172.

17. Further, Ms. Morel does not dispute that Claimant was in pain and needed to go home for the day after he returned from Primary Health:

> Q All right. Did you have any contact with Nick Sandoval that day, March 24th, 2007 [sic], after Tricia Chase told you that he had reported an accident?
>
> A Yes. He came back after he had been through the clinic, he came back into the store room and I asked him how he was doing, how – you know. And he was – he told me that his back still bothered him and was hoping that he could go home and so I kind of looked at the workload and the number of people that we had still available and determined that that would be a good thing, probably, for him to do.

Tr., p. 154.

18. In spite of Ms. Morel's skepticism on March 24, she did not go to the bulk warehouse to see where Claimant was working or what he had lifted. In fact, Employer did not commence an investigation until April 2, 2010.

19. On April 10, 2010, Mr. Danies provided information derived from a review of the computer records. On that day, he wrote an email to Ms. Nicolosi opining that there were no DragonWave parts in the pallet locations where Claimant was pulling parts on March 24. He did not provide information as to the other parts that were stored in these places, but he did agree that heavy items are stored in the bulk warehouse. He also agreed that materials handlers must routinely move boxes that are not on their pull lists.

20. It is unclear from either Mr. Danies' email or hearing testimony how he defined "pallet locations". He also did not address the outer perimeter he assumed Claimant would need to search to find the items he needed to pull. Further, like Ms. Morel, he did not observe the area on March 24 to investigate Claimant's allegation. In short, Mr. Danies did not rule out the possibility that Claimant injured himself lifting a heavy box or even that he may have injured himself lifting a box of DragonWave parts.

21. By the time Employer initiated its investigation, the inventory had shifted in the bulk warehouse. Any material evidence on the issue of what item Claimant actually lifted, discoverable by inspection on March 24, was lost. This is contrary to Employer's approach to Claimant's 2009 lifting injury, in which Employer obtained the box he lifted and weighed it. It was during this process that Claimant learned the contents of that box:

> Q How do you know they were DragonWave parts?
>
> A I remember – I remember them. At one point parts were weighed and they told me that they were DragonWave parts.
>
> Q Because of your injury the company took it upon themselves to weigh the parts?
>
> A Yes.

Tr., p. 25.

22. Also during the 2010 investigation, Defendants learned Claimant had told coworkers, following a trip over Christmas 2009, that he had a sore back and foot numbness. Ms. Morel overheard one of these conversations and Stephanie Bow, a coworker, participated in more than one. The record does not divulge specifically when these took place.

23. Concurrent with the investigation, Claimant's symptoms persisted. He underwent an MRI on April 9, 2010 which identified the source of his persistent low back pain and right leg numbness: a right paracentral disc protrusion at L4-5 with impingement of the right L5 nerve root causing narrowing of the central canal. It also demonstrated a focal central disc bulge at L5-S1 with an annular fissure, but no extrusion of the nucleus.

24. Documentation of Claimant's follow-up care at Primary Health on April 1 and April 15 continues to confirm that the injury was work-related.

25. Claimant was referred to Dr. Montalbano, who became his treating neurosurgeon. Dr. Montalbano opined on April 28, 2010 that Claimant's back injury is consistent with lifting a 50-pound box at work:

> Mr. Sandoval is a 28-year-old, right-handed, white male who presents with a right L5 radiculopathy. The etiology of his symptomatology is related to his work-related injury on 03-24-10. The mechanism of injury as well as symptomatology correlates with his MRI scan.

CE 6, p. 124. At his deposition, Dr. Montalbano testified that disc herniation is also consistent with other activities, many of which are much less strenuous. He provided examples including waking up in the middle of the night, having sex, coughing, sneezing, stepping off a curb and motor vehicle accidents. When conservative therapies failed, Dr. Montalbano recommended a right L4-5 microdiscectomy. No medical evidence in the record disputes Dr. Montalbano's opinions.

26. On May 4, 2010, six weeks after Claimant reported his accident, Surety assigned a claims adjustor to interview Claimant over the telephone. Consistent with his April 2 written statement, Claimant reported that he had injured his back lifting a heavy box. He thought the box contained metal plates but was ultimately unsure, as the bulk warehouse stores many different parts, some of them heavy. Claimant acknowledged more than once that the box was part of what he was supposed to be pulling for that day. However, he never acknowledged that the box was an item on his pull list. Claimant also reported that he had no preexisting symptoms.

27. Surety denied coverage for the recommended surgery based upon evidence that Claimant was concealing similar preexisting back pathology and that DragonWave parts were not on his March 24, 2010 pull list. On June 2, 2010 Mary Cronin, claims adjustor, wrote:

> The basis for the denial is based on witness statements reporting that he came back from his trip to Italy with a sore back and even complained of numbness in his leg. Mr. Sandoval had indicated that on the day of the alleged injury he had

> been lifting some plates that weighed 40-50 pounds and the employer had indicated that on the day he is reporting the injury, those plates were not on the pull list.

CE 12, p. 150. Surety ceased benefits as of May 11, 2010 and continued to deny reinstatement of coverage despite ongoing requests from Claimant.

28. Claimant's condition deteriorated and he was no longer able to work as of June 1, 2010. He underwent the recommended surgery on June 7, 2010, with no immediate complications. He was unable to work for a period afterward while he recovered.

29. At his deposition on August 3, 2010, Claimant consistently testified that he lifted a heavy box that may have contained DragonWave parts. He also testified, once he understood Defendants' line of questioning in this regard, that he did not know whether the heavy box he lifted was actually on his pull list for the day, or whether it was just a box he was moving out of the way to access an item on the list.

30. At the hearing, after reviewing Defendants' discovery responses revealing reproductions of his March 24, 2010 pull list, Claimant testified that the heavy box he lifted was not on it. The list contained items that weighed only a few pounds. He remained uncertain as to the contents of the box he lifted that induced his injury, but confirmed that the box was as heavy as one containing DragonWave parts.

31. In Fall 2010, Employer discovered that Claimant told elaborate lies to his supervisors and coworkers beginning in late 2009 to obtain time off from work that was otherwise unauthorized. As a result, Claimant was fired on November 17, 2010.

DISCUSSION AND FURTHER FINDINGS

The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods,* 117 Idaho 955, 956, 793 P.2d 187, 188

(1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc*., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

Causation

The Idaho Workers' Compensation Act places an emphasis on the element of causation in determining whether a worker is entitled to compensation. In order to obtain workers' compensation benefits, a claimant's disability must result from an injury, which was caused by an accident arising out of and in the course of employment. *Green v. Columbia Foods, Inc.*, 104 Idaho 204, 657 P.2d 1072 (1983); *Tipton v. Jannson*, 91 Idaho 904, 435 P.2d 244 (1967).

Eligibility for worker's compensation benefits requires a claimant to prove he or she suffered an injury from an accident arising out of and in the course of covered employment. I.C. § 72-102(18)(a). The term "accident" is a term of art under Idaho law, and is defined at I.C. § 72-102(18)(b) as follows:

> "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

The claimant has the burden of proving the condition for which compensation is sought is causally related to an industrial accident. *Callantine v.Blue Ribbon Supply*, 103 Idaho 734, 653 P.2d 455 (1982). Further, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. A claimant is required to establish a probable, not merely a possible, connection between cause and effect to support his or her contention. *Dean v. Drapo Corporation*, 95 Idaho 958, 560-61, 511 P.2d 1334, 1336-37 (1973). See also *Callantine*, *Id*..

The Idaho Supreme Court has held that no special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 591 P.2d 143 (1979); *Roberts v. Kit Manufacturing Company, Inc.*, 124 Idaho 946, 866 P.2d 969 (1993).

32. There is no dispute that Claimant suffered a lumbar disc herniation that required corrective surgery, that the injury is consistent with lifting a heavy box at work, or that if the injury occurred as Claimant contends, it would be compensable. Therefore, the only disputed issue before the Commission is whether to accept Claimant's account that the onset of his injury is attributable to an unwitnessed workplace accident on March 24, 2010.

Claimant's Credibility

33. **General credibility issues.** Defendants challenge Claimant's credibility for a number of reasons. First, they argue that Claimant is not a truthful individual and that all of his testimony should, as a result, bear closer scrutiny.

34. It is undisputed that Claimant has lied to his employer and his coworkers. Specifically, Claimant admitted two occasions on which he told elaborate lies to get more time off than he was entitled to, to go see his girlfriend in Ottawa. First, over Christmas 2009, Claimant sought time off for a made-up, once-in-a-lifetime trip to Italy to see his sister. Then, when he was late returning from the actual trip he took to Ottawa, he told another whopper. He explained that he was delayed because his plane was diverted to Canada due to airport security issues involving the underwear bomber. Second, in February 2010, Claimant made up the existence of a dead grandfather in Texas to get time off for the fictitious funeral. Employer

granted Claimant time off, as well as bereavement pay. In furtherance of his scheme, Claimant also lied to his coworkers about his true destination on these trips.

35. Not surprisingly, Claimant had ongoing issues with Employer as a result of attendance problems. Yet, he very much wanted to visit his girlfriend whenever possible. Adding to his issues, Claimant was embarrassed about having met her online and endeavored to conceal this fact. On redirect examination at the hearing, Claimant admitted his untruths and explained his motivation:

> Q You told your coworkers that you were going to your grandfather's funeral in Texas –
>
> A Yes.
>
> Q -- in order [sic] get leave to go on vacation to see your girlfriend.
>
> A Yes.
>
> Q Was that true?
>
> A It is true.
>
> Q Was it true that you were going to a funeral?
>
> A No.
>
> Q Okay. Was it your intent to disrespect your grandfather?
>
> A No.
>
> Q What was your intent by making up the story?
>
> A My intent was to go and visit my girlfriend.
>
> Q You just wanted time off?
>
> A I just wanted time off.
>
> Q It wasn't that you were trying to disrespect your father [sic]?
>
> A No.

Q When you told them you were going to Italy, was it your intent to disrespect your sister?

A No.

Q Was it your intent to disrespect the United States Navy?

A No.

Q What was your intent by telling your coworkers that you were going to Italy?

A To visit my girlfriend.

Q You just wanted time off?

A I wanted time off.

Q You didn't have sufficient vacation time?

A I did. I had so many days, but I didn't have what – the full amount, so no.

Q So, you made up a story?

A I made up a story.

Q But it was a story with a purpose?

A Yes.

Q To see your girlfriend?

A Yes.

Q Did you intend to harm your coworker by making up the story?

A No.

Tr., pp. 70-72.

36. The Referee finds Claimant's deceptions to obtain more time off to see his girlfriend signify a high comfort level with lying to achieve the secondary gains of visiting her

and saving himself from embarrassment. They also demonstrate disregard for Employer's policies and a willingness to game that system in those situations.

37. In addition, Claimant had some experience with the worker's compensation system. He was involved with two prior medical treatment-only claims (both at Employer's) and he had discussed worker's compensation claims in general with Ms. Bow. Specifically, Ms. Bow advised him, before March 24, that he should be careful when stating a worker's compensation claim. Ms. Bow wanted Claimant to avoid her own bad experience with a claim in which benefits were denied because she reported that she "thought" she had hurt her back at work. Tr., p. 135.

38. Further, Employer had some evidence that Claimant was experiencing back pain and numbness in his legs before March 24. Add all this up, and one could conclude that Claimant is attempting to capitalize on a fictitious worker's compensation claim.

39. However, the foundation for that conclusion is too shaky given the totality of the evidence presented in this case. While Defendants have conclusively proven Claimant lied in order to see his girlfriend, they have failed to establish any reason why Claimant would risk his job to pursue a bogus claim. There is no *per se* rule requiring Defendants to establish a motive to lie in order to prove he is not a credible witness. However, where the proof of prior lies does not support a reliable prediction about a claimant's behavior in the matter in question, consideration of this proof is more prejudicial than probative.

40. Even though Claimant knew that Employer was privy to these proceedings, he testified *truthfully* about his lies, under oath, at his deposition and at the hearing. As Defendants emphasize in their brief, Claimant divulged his lies on direct examination. He knew the questions were coming; he also knew Employer would learn the answers. Yet, Claimant told the

truth at the risk of losing his job, which is exactly the eventuality that befell him as a result of his forthcomingness. Further, although he did receive some financial gain as a result of his lies, in the way of bereavement benefits, the Referee finds this was merely an incidental gain.

41. Viewing the general credibility evidence as a whole, Defendants have failed to persuade the Referee that Claimant's lies unrelated to his claims is either broad or specifically applicable enough to warrant a finding that he is wholly without credibility. Human nature dictates that most all people lie under some conditions. Here, detailed accounts of one very specific condition under which Claimant has lied to Employer and his coworkers are in evidence. However, this evidence is insufficient to persuade the Referee that Claimant is more willing, motivated or otherwise likely to lie to obtain worker's compensation benefits than any other claimant.

42. **Specific credibility issues.** Second, Defendants assert that Claimant has been untruthful with respect to details concerning his instant claim. They contend he changed his story at the hearing on January 19, 2011. Specifically, Defendants argue that Claimant *originally* reported that he injured his back lifting a box of DragonWave parts and that this box was on his pull list; however, *at the hearing* Claimant was unsure what the box contained and was certain it was not on his pull list. They also point to evidence that Claimant had preexisting back and leg pain that he did not report until the hearing. Defendants posit that Claimant changed his story to fit their defense after reviewing adverse evidence divulged through the discovery process.

CONTENTS OF THE BOX

43. At the outset, it should be noted that there is no contemporaneous documentation, other than Ms. Chase's note, indicating that Claimant reported on March 24 that the heavy box he lifted contained DragonWave parts. Ms. Chase, who no longer worked for Employer, also

testified at the hearing that Claimant said he was lifting DragonWave parts. Claimant's June 2009 injury occurred after he lifted DragonWave parts and, on the day she composed the note, Ms. Chase was confused about how to process Claimant's 2010 claim. It is not surprising that her note references DragonWave parts, nor that her testimony is consistent with her note, nor that Claimant may have believed at that time that the box he lifted may have contained them. This evidence is inadequate to establish that Claimant ever stated with certainty that the box contained DragonWave parts.

44. In addition, Ms. Morel, in her April 7 email (discussed above) and at the hearing, reported that Claimant told her on April 2 that the box contained DragonWave parts. By the time of her writing, Ms. Morel was invested in her skepticism and knew that DragonWave parts were not on Claimant's pull list, whereas Claimant at that time did not know. Her interpretation of what Claimant said must necessarily be viewed with that context in mind. Further, she failed to report other details on April 7 (such as leaving out the detail concerning Claimant's cart which was important to her at the hearing), indicating her after-the-fact email is not a wholly reliable account of the March 24 events and possibly not of the April 2 events, either. Finally, Ms. Morel wrote that Claimant told her he had lifted "…46-000490-01-01-436 (Dragonwave) parts…," but she admitted at the hearing that Claimant had not actually identified them by number. DE 7, p. 1. Ms. Morel's history is her own paraphrase of her conversation with Claimant. The Referee is not convinced that, had Claimant indicated uncertainty about the contents of the box he lifted, it would have been conveyed in Ms. Morel's brief, goal-oriented summary. Like the evidence from Ms. Chase, the evidence from Ms. Morel is inadequate to establish that Claimant ever stated with certainty that the box contained DragonWave parts.

45. Moreover, no firsthand evidence from Claimant, including his April 2 statement, indicates anything other than that the box *may have* contained DragonWave parts. An excerpt from his initial conversation with the claims adjustor, six weeks after his injury, indicates Claimant was unsure what was in the box he lifted. It also indicates Claimant assented to a line of leading questions from the adjustor as to whether the items on the floor were items he was supposed to pull that day, discussed below:

> Q Okay, then can you tell me what happened on this incident on March 24th?
>
> A Correct. It was the first day of work. It was on a Wednesday.
>
> Q Uhuh.
>
> A Um, that morning, I ended up, it was a normal day basically. We got our duties for the day and uh, I was, um, I was heading down to the warehouse again, and um, basically, there was some heavy materials that um, we have a cart that we use to push the materials around, so the materials (unintelligible) on the floor so I proceeded to pick up this, the materials that was on the floor. Um, that morning…
>
> Q Okay, can I ask you, were those materials on the floor part of what you were pulling for that day?
>
> A Correct.
>
> Q Okay.
>
> A Correct. The material itself was, the box itself was heavy, and like I said before it was like a 40 to 50 pound box so um I remember going down to the warehouse, I was starting to pull the carts and uh, I came across this box and I proceeded to lift up the box. Now, when I lift up the box it was fairly, it was heavy, but it wasn't, um, it wasn't as, I didn't think, you know, I didn't, we, everybody's pulled these boxes before so it wasn't like anything we needed some assistance with or anything certain individuals can pick up these boxes. So I proceeded to pick up the box and bend over and when I picked up the box that's when my back crinched and just had this really, really hot pain, sharp pain, so, um, when I picked the box, I put the box down and then I kind [sic] hunched over and I was there for a little bit cause I couldn't move, um, there was nobody around so finally I ended up, you know, gathering myself up, um, I proceeded over to human resource and let them know of the incident.

Q Okay. So, now, but the box that you were picking up, you had indicated to me before that it was these metal plates?

A Correct. I think they're metal (unintelligible) they were metal plates.

Q What do they call em?

A Um, you know what I'm not entirely sure ma'am.

Q Okay.

A I mean there's so many parts back there, I don't know what they're called.

Q Sure.

A I just know that their [sic] plates and their [sic] pretty, you know their [sic] fairly, their [sic] pretty heavy.

Q But that's what you were supposed to be pulling for that day?

A Correct ma'am.

DE 11, p. 2.

46. The evidence in the record establishes that Claimant has consistently reported he injured his back lifting a heavy box; only Defendants' witnesses testified that he said with certainty that it contained DragonWave parts. Only Defendants attached significance to this point before April 2, and all evidence on this question, except Ms. Chase's note, was gathered on or after that date. Given the countervailing interests involved, the Referee is not convinced that Claimant's position on this question was ever inconsistent. This evidence does not support the proposition that he did not injure himself lifting a heavy box at work on March 24.

WHETHER THE BOX WAS ON HIS PULL LIST

47. On May 4, 2010, the adjustor repeatedly asked Claimant whether the items on the floor, or the heavy box, were part of what Claimant was supposed to be pulling for the day. (*See* excerpt from DE 11, p. 2, above). She never asked him whether they were on his pull list. *Id.*

All of the items Claimant lifted on March 24 could easily be characterized as items that he was supposed to be pulling for the day, as opposed to items he had no reason to be moving. Claimant's statements to the adjustor do not establish he was asserting the heavy box he reported he lifted was actually on his pull list.

48. Further, as discussed above, Defendants were aware there were no heavy items on the pull list long before Claimant was aware of that fact. Their ambiguous questions to Claimant during the adjustor's interview, in light of this knowledge, are consistent with an effort to craft the appearance of an admission of a fact he likely would not have thought relevant or remembered six weeks later at his adjustor interview, let alone 5 months later at his deposition. Defendants relied upon selected statements from Claimant's deposition in which he agreed that the heavy box he lifted was part of an order he was filling. However, the context of Claimant's answer and his subsequent testimony makes it clear that he did not understand the call of Defendants' questions in that regard and that he, understandably, did not remember whether the box was part of an order he was filling or not:

Q. (BY MR. WIGLE) You don't know what's in the box?
A. No.

Q. Do you know how heavy the box was?
…
A. I do not know.

Q. Give me your best estimate.
A. Fifty pounds.

Q. Where was the box located when you started to lift it?
A. On the ground.

Q. Where were you lifting it to?
A. I was lifting it to the cart that we put product on.

Q. Is the cart about waist height or lower?
A. Lower.

Q. Were you lifting this box as part of your responsibility to fill an order?
A. Yes.

Q. Do you know what the order was for?
A. Don't remember.

Q. How do you identify those orders out there?
A. We have an electronic – it's like a scanner, and it has the orders in there. So you look at the orders, and it tells you where the part's at. So you go to that designated area to find that part. So it could be buried behind boxes and boxes. And that's how we separate the parts.

Q. Okay. I have an even more basic question: How do you identify what order it is that you're working on? Is there an order number or order name, or how does it work?
A. There's an order number on the actual scanner.

Q. Is there also a description of some sort as to what the order comprises?
A. No.

Q. So you get a number and you get a list of parts?
A. Yes.

Q. In a typical day out there, how many orders would you be involved in filling?
A. About 40-50 orders a day, I would think.

Q. This particular box that was involved in your accident would have been part of an order that you were filling sometime between 6 and 10 a.m. on March 24, 2010?
A. Yes.
Q. Correct.
A. (Head nod.)

Q. Is there any way that you can better identify for me or point me in the right – a direction finding out which order this might have been?
A. I don't know.

Q. And the reason I ask that is that I've been told that the records out there aren't indicating that you were involved in handling anything that heavy during that day. Have you heard that?
A. No.

Q. Do you have a response to that?
MR. NAUMAN: Excuse me.
Q. (BY MR. WIGLE) An explanation?

MR. NAUMAN: I'm going to interpose an objection here. You said the records don't reflect he handled anything that heavy, you didn't describe how heavy that heavy is.

My client's testified that over the course of picking parts, sometimes parts are behind other parts and…other boxes, and boxes have to be moved to get to the parts which he's trying to pick.

MR. WIGLE: Oh. I hadn't heard that testimony, but I appreciate it.

MR. NAUMAN: He testified to that –

THE WITNESS: Yes, I did.

MR. NAUMAN: -- a few minutes ago.

Q. (BY MR. WIGLE) All right. Was this particular part or this box that you were lifting part of an order that you were filling?
A. Yes.

Q. So this wasn't a situation where you were moving something out of your way to get to another part?
A. We always have to move things out of the way to get to parts.

Q. The box that you were lifting when you hurt your back was part of your order, correct?
A. Yes.

Q. You were actually going to put this box onto your cart as part of the order that you were taking; that's my understanding of what you're saying. Is it wrong?
A. I was picking up the part, and I was placing that part onto the cart. And I don't remember if that box was actually – that part was on that order, now that you've clarified.

Q. Why would you be putting it on the cart?
A. Because the bottom part there's multiple boxes, and in order to clear your way to get to that label, which the scanner has, you have to go to that box, and you've got to look for it. I put boxes on the cart in order to get to the back of the box.

Claimant's Dep., pp. 42-47.

49. The evidence in the record does not establish that Claimant ever said that the box was on his pull list. Although he did say, inaccurately, that the box was part of an order he was filling, he corrected this statement as soon as he understood the distinction Defendants intended for him to draw, between items on his pull list and items he needed to move to get to the listed items. Further, it is entirely reasonable that after Claimant saw the pull list provided by

Defendants in discovery, he became convinced that the box he lifted was not on it. None of this evidence establishes that Claimant did not lift a heavy box at work, inducing a herniated disc, on March 24.

PREEXISTING SYMPTOMS

50. Defendants also argue Claimant is not credible because he reported no pre-March 24 back or leg symptoms until after Defendants informed him they would call witnesses to establish that he complained of such symptoms, that these symptoms originated on a ski trip and that he needed help from coworkers lifting heavy items before March 24.

51. No evidence was introduced to support the ski trip or lifting assistance allegations. Further, Dr. Montalbano's testimony establishes that Defendants' evidence of Claimant's back and leg symptoms was not consistent with a prior disc herniation. Dr. Montalbano is the only physician who addressed whether Claimant's low back injury occurred at work on March 24, 2010. Testifying that he had treated thousands of patients with herniated discs, he advised that he looks to a patient's report of symptom onset to determine what caused the injury:

> In terms of the disc herniation, when actually that occurred, it's based on what the patient reports in terms of a history as to when he experienced the onset of his symptoms and potential mechanism, if there is one present, associated with those symptoms.
>
> A lot of times patients can have disc herniations and not even know about it, not even be an issue. For example, I'll see patients with a disc herniation on the left, but the symptoms are on the right and vice versa, so a lot of times a disc herniation is not causing the symptoms.

Montalbano Dep., pp. 15-16.

52. Dr. Montalbano opined that Claimant's disc herniation would have been symptomatic before March 24 if it had occurred before then:

> Mr. Sandoval had an extruded disc fragment which was compressing his nerve on his right side. I would have expected him, given the size of his disc herniation, to have some symptoms prior to his work injury of March 24, 2010, if it was present prior to March 24, 2010.

Montalbano Dep., p. 16. He further opined that if Claimant had sustained his injury during his Christmas 2009 trip, as Defendants posit, his symptoms would not necessarily have required him to take time off from work or seek restricted work. However, he would likely have had leg pain complaints before March 24:

> I would say that as far as taking time off of work, it's a little bit of a mixed bag, depending on his pain syndrome and how much he could lift at work. I would expect him to have some symptoms during that period, though, some complaints of leg pain. Whether he sought out care by another physician or his coworkers, he talked to them about having leg pain.
>
> Given the size of his disc I would expect Mr. Sandoval to have some complaints of leg pain during that interval time period.

Montalbano Dep., pp. 17-18.

> You would look at complaints at work that his back bothers him, that his leg pain bothers him, he could walk with a limp, he could complain of any variety of subjective symptoms, like pain, numbness, tingling, weakness.

Montalbano Dep., p. 25.

53. Dr. Montalbano concisely summed up the factors he considered when determining whether Claimant suffered his back injury on March 24, opining that he would not consider Claimant's injury to be work-related if he had certain symptoms within six months before March 24:

> If Mr. Sandoval was asymptomatic in terms of back pain and right-leg pain for six months prior to March 24, 2010, and then he experienced – he experienced/reports a work-related injury on March 24, 2010, and once again, he was asymptomatic six months prior, I would then attribute his symptomatology, as well as any need for treatment, to be related to that injury.

> If Mr. Sandoval sought out medical treatment for back pain and/or right-leg pain prior to March 24, 2010, within that six-month period, then I would not attribute his symptoms and need for surgery to be related to that work-related injury.

Montalbano Dep., pp. 18-19. He explained that *relevant* pre-March 24 complaints would specifically concern right lower extremity pain, and specifically would *not* concern bilateral lower extremity pain or just a stiff back. Dr. Montalbano confirmed that he was not aware that Claimant had any back pain or radiculopathy within the six months prior to March 24, 2010.

54. Claimant told the claims adjustor on May 4 that he had no preexisting back problems "whatsoever" as of March 24. DE 11, pp. 1-2. At the hearing, however, he admitted that he had general back aches and pains associated with work prior to March 24. In addition, Ms. Bow testified that Claimant had foot numbness (not always in the same foot) that he attributed to uncomfortable shoes, which he replaced. Claimant testified that this remedy resolved his foot symptoms. Dr. Montalbano's testimony arguably rules out both of these types of symptoms as indicators that Claimant's herniated disc preexisted March 24.

55. In addition, Claimant's statements that he did not have back pain before March 24, 2010 are subjective and contextual. It is understandable that he would assume he is being asked to divulge *significant* symptoms, or symptoms he believed were related to his current condition. His failure to divulge everyday aches and pains, or issues with ill-fitting shoes, does not establish he was being deceptive.

56. The weight of the evidence supports Claimant's contention that he suffered an injury from an accident arising out of and in the course of his employment on March 24, 2010. Before he reported his injury, Ms. Morel noted no adverse symptoms. Further, she did not dispute that Claimant needed to leave for the day due to back pain after he returned from receiving medical care. Along these lines, Dr. Montalbano confirmed that Claimant's injury is

consistent with the accident occurring when and where Claimant describes. These facts corroborate Claimant's injury report and establish his *prima facie* case.

57. Defendants' evidence fails to rebut Claimant's case. Although Claimant's credibility is assuredly made an issue by virtue of the unrelated representations he made to obtain time off from work, Defendants have failed to prove that he has lied in connection with these proceedings about his relevant symptoms or their work-related cause. Claimant has made statements which, in a vacuum, could appear to be inaccurate or deceptive. However, when considering the delayed timing and indirect manner in which these statements were procured, it is at least as likely that any purported inaccuracies in the record resulted from Claimant's honest misunderstanding of the questions put to him. Further, Defendants' lay evidence of pre-existing symptomatology is patently inadequate to rebut Dr. Montalbano's opinion that the injury is work-related.

58. Having carefully reviewed all of the evidence in the record, and having also observed Claimant at the hearing, the Referee is persuaded that Claimant suffered a low back injury in the bulk warehouse on March 24, 2010. Defendants failed to rebut his *prima facie* showing. The Referee finds Claimant has proven by a preponderance of evidence that his L4-5 disc herniation occurred as a result of an accident that befell him within the course and scope of his employment and, thus, is a compensable injury.

Reasonable Medical Care

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 claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 890 P.2d 732 (1995). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

59. Defendants paid for Claimant's medical care through May 10, 2010; thereafter, Claimant underwent microdiscectomy surgery, and presumably some follow-up care, directly related to his industrial accident. There is insufficient evidence in the record from which to determine if or when he reached maximum medical improvement (MMI).

60. The Referee finds Claimant is entitled to additional reasonable and necessary medical care to treat his back pain and right leg radiculopathy from his industrial lumbar spine injury, pursuant to Idaho Code § 72-432, from May 11, 2011 until such time that he reached (or reaches) MMI. The amount of unpaid medical expenses incurred by Claimant is not evident from the record. *Neel v. Western Construction,* 147 Idaho 146, 206 P.3d 852 (2009), is premised on the assumption that an injured worker who contracts for medical care outside the workers' compensation system has, or may have, exposure to pay the full invoiced amount of medical bills incurred in connection with his treatment. Here, there is no evidence that Claimant is obligated to pay anything other than the full invoiced amount. Therefore, as in *Neel*, we find Claimant is entitled to payment of the full invoiced amount of his unpaid reasonable medical expenses related to treatment of his March 24, 2010 industrial injury.

Temporary Total Disability

61. Idaho Code §§ 72-408 and 409 provide time loss benefits to an injured worker who is temporarily totally disabled. Here, Claimant continued to work, with pain and under restrictions, from the date of his March 24, 2010 until approximately June 1, 2010, when he could no longer tolerate working. On June 7, 2010, he underwent microdiscectomy surgery. Thereafter, he was off work for a period of recovery. Surety has paid no time loss benefits, and there is insufficient evidence in the record from which to determine the exact period during which Claimant is eligible for compensation payments.

62. Claimant has proven that he is entitled to time loss benefits related to his industrial accident beginning on or about June 1, 2010 and ending at such time that he reached MMI or otherwise became ineligible for compensation payments.

Attorney Fees

63. Idaho Code § 72-804 provides that if the Commission determines that the employer contests a claim for compensation made by an injured employee without reasonable ground or the employer neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee the compensation provided by law or without reasonable ground discontinued compensation as provided by law, the employer shall pay reasonable attorney fees in addition to the compensation provided by law.

64. Defendants maintained their denial, in part, on the basis that Claimant had symptomatology of a preexisting injury even though they did not obtain a medical opinion to refute Dr. Montalbano's opinion that Claimant's injury was due to a workplace accident. Dr. Montalbano's unchallenged April 28, 2010 opinion leaves no room for a finding that Surety's denial on this basis was reasonable.

65. Defendants argue, however, that Dr. Montalbano's opinion is only relevant if Claimant can first establish a workplace accident since Dr. Montalbano's opinion necessarily rests upon Claimant's reports in this regard. The Referee agrees that Dr. Montalbano's opinion is not relevant if Claimant was untruthful about the onset of his symptoms. Therefore, if Defendants had sufficient evidence at the time of denial to doubt Claimant's report, then the denial was reasonable.

66. In this regard, Claimant argues that Defendants' indictment of Claimant's credibility, at the time they denied the claim, was essentially a witch hunt. They failed to begin investigating until more than a week had passed. They allowed the best evidence of whether Claimant was truthful about what he had lifted to evaporate even though Ms. Morel was immediately suspicious. Then, they planned their case and gathered evidence in a manner which unfairly disadvantaged Claimant before deciding to deny the claim. As discussed above, the questions put to Claimant by the adjustor on May 4 were ambiguous as to whether they sought information about what exactly was on his pull list. Nevertheless, Surety relied on Claimant's affirmative answers to those questions to establish that he lied about lifting a heavy item that was on his list. If Surety really wanted to know whether Claimant correctly remembered or reported whether the box was on the list, and to rely on Claimant's response to support its denial, it should have simply asked, from the beginning, "Was the box you were lifting when you hurt your back on your pull list?"

67. However, there is also evidence in the record of Employer's computer records of its inventory, offered through Ms. Morel and Mr. Danies, that no DragonWave parts were either on Claimant's pull list on March 24, nor within the pallet locations of the parts he sought. The Referee ultimately found this evidence unpersuasive because it fails to establish that Claimant

did not lift a heavy box at work, perhaps a DragonWave box, inducing the injury to his low back. It does, however, provide adequate grounds on which to challenge Claimant's allegations in this case.

68. When Surety denied the claim, its evidence was flimsy but arguably difficult to interpret. The evidence in the record fails to establish by a preponderance of evidence that Defendants acted unreasonably. Claimant is not entitled an award of attorney fees in this case.

CONCLUSIONS OF LAW

1. Claimant has proven his herniated L4-5 disc and related low back pain and right leg numbness symptoms were caused by the industrial accident of March 24, 2010.

2. Claimant has proven that he is entitled to reasonable and necessary medical care for his herniated L4-5 disc and related symptoms, including the microdiscectomy surgery performed on June 7, 2010 and appropriate follow-up care. Claimant is entitled to unpaid medical bills through the date of this decision at 100% of the invoiced amount. Bills incurred subsequent to the date of this decision shall be paid pursuant to the applicable Industrial Commission fee schedule.

3. Claimant has proven that he is entitled to TTD benefits from June 7, 2010 until such time that he reaches MMI or otherwise becomes ineligible for compensation payments.

4. Claimant has failed to prove that he is entitled to attorney fees under Idaho Code § 72-804. Defendants did not unreasonably deny TTD or medical benefits.

5. Issues pertaining to PPI and PPD related to Claimant's compensable L4-5 disc herniation are reserved.

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 __29TH____ day of July 2011.

INDUSTRIAL COMMISSION

_____/s/_____
LaDawn Marsters, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __10th_____ day of _____August_____, 2011, 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:

ROBERT A NAUMAN
3501 ELDER ST STE 108
BOISE ID 83705-4986

W SCOTT WIGLE
PO BOX 1007
BOISE ID 83701-1007

srn _____/s/_____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

NICANOR SANDOVAL, Claimant, v. PLEXUS CORP., Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2010-009077** **ORDER** AUGUST 10, 2011

Pursuant to Idaho Code § 72-717, Referee submitted the record in the above-entitled matter, together with her 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 recommendations of the Referee. The Commission concurs with these recommendations. 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 proven his herniated L4-5 disc and related low back pain and right leg numbness symptoms were caused by the industrial accident of March 24, 2010.

2. Claimant has proven that he is entitled to reasonable and necessary medical care for his herniated L4-5 disc and related symptoms, including the microdiscectomy surgery performed on June 7, 2010 and appropriate follow-up care.

3. Claimant has proven that he is entitled to TTD benefits from June 7, 2010 until such time that he reaches MMI or otherwise becomes ineligible for compensation payments.

4. Claimant has failed to prove that he is entitled to attorney fees under Idaho Code § 72-804. Defendants did not unreasonably deny TTD or medical benefits.

5. Issues pertaining to PPI and PPD related to Claimant's compensable L4-5 disc herniation are reserved.

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

DATED this __10____ day of ____August_____, 2011.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
Thomas P. Baskin, Commissioner

_____/s/_____
R.D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __10____ day of ___August_____, 2011, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

ROBERT A NAUMAN
3501 ELDER ST STE 108
BOISE ID 83705-4986

W SCOTT WIGLE
PO BOX 1007
BOISE ID 83701-1007

srn _____/s/_____