UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

DAVID L. FORURIA, an individual, CAROL A. FORURIA, an individual, Plaintiffs, vs. CENTERLINE DRIVERS, LLC, a Nevada Limited Liability Corporation, BCT, Inc., a Delaware Corporation and Plan Administrator, whose identity is unknown, Defendants.	Case No. 1:16-cv-00328-EJL-REB **ORDER**

INTRODUCTION

Pending before the Court are Defendants' Motions for Summary Judgment. (Dkts. 15, 16.) The parties filed responsive briefing and the motion is now ripe for decision. Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decision making process would not be significantly aided by oral argument, the Motions shall be decided on the record before this Court without oral argument.

FACTUAL BACKGROUND[1]

In December 2014, Plaintiff David Foruria was hired by Defendant Centerline Drivers, LLC ("Centerline") as a commercial truck driver. (Dkt. 1-1, ¶ 9.) In January 2015, Mr. Foruria was placed on assignment with Defendant BCT, Inc. ("BCT") as a Class A truck driver. (Dkt. 1-1, ¶ 11.)

On or about Friday, August 14, 2015, Mr. Foruria was involved in a car accident unrelated to employment and was cited for following too closely. (Dkts. 1-1, ¶ 18-20; 19; 20.) The following Monday, August 17, 2015, Mr. Foruria notified BCT's safety director of the incident and his intent to challenge the citation. (Dkt. 1-1, ¶ 27.)

On November 5, 2015, Mr. Foruria attended a hearing on the traffic citation. (Dkt. 1-1, ¶ 24.) The charge was reduced to an infraction and Mr. Foruria admitted his guilt and paid a $90 fine. (Dkt. 1-1, ¶ 24.) That same day, Mr. Foruria contacted BCT's safety director and informed him that he had been found guilty of the infraction, paid the fine, and was going to attend a class to remove the points assessed against his driving record. (Dkt. 1-1, ¶ 25.)

On November 27, 2015, Mr. Foruria delivered a load of lumber on a job for BCT. (Dkt. 1-1, ¶ 29-30.) During the delivery, Mr. Foruria strained to unloosen a frozen strap from the load and his left eye bulged out of its socket. (Dkt. 1-1, ¶ 31-33.) Mr. Foruria

[1] For purposes of these Motions, the Court accepts the facts as presented by Plaintiffs, except where specifically noted.

immediately reported the injury to his supervisor at BCT, Mike Hayes, who suggested he see a doctor. (Dkt. 1-1, ¶ 34, 35.)

On November 30, 2015, Mr. Foruria saw an optometrist who referred him to a retina specialist. (Dkt. 1-1, ¶ 34-36.) That same day, Mr. Foruria again contacted Mr. Hayes and informed him that he needed time off to have surgery and conveyed that he intended to apply for leave under the Family and Medical Leave Act (FMLA), disability insurance, and worker's compensation benefits. (Dkt. 1-1, ¶ 37.) The next day, December 1, 2015, Mr. Foruria informed Mr. Hayes that his eye surgery was scheduled for December 3rd and reiterated his intention to request FMLA leave and apply for benefits. (Dkt. 1-1, ¶ 42.)

After each discussion, Mr. Hayes told Mr. Foruria he would take care of his requests and advised him to contact Centerline. (Dkt. 1-1, ¶ 38, ¶ 43.) Mr. Foruria contacted Centerline's Senior Operations Manager conveying identical information on both dates. (Dkt. 1-1, ¶ 39-40, ¶ 44.)

On December 10, 2015, while Mr. Foruria was on FMLA leave, BCT and Centerline terminated Mr. Foruria. (Dkt. 15-8, Ex. G.)

During his employment, Mr. Foruria and Plaintiff Carol Foruria, as a dependent, (collectively "Plaintiffs") were on a UnitedHealthCare (UHC) health plan provided by Centerline. (Dkt. 1-1, ¶ 50-51.) On December 31, 2015, Mr. and Ms. Foruria lost coverage under their health plan. (Dkt. 1-1, ¶ 52.) Plaintiffs allege that they did not receive the COBRA benefit information until September 2016. (Dkt. 1-1, ¶ 54-60.)

On June 29, 2016, Plaintiff filed this action in the Fourth Judicial District of Idaho alleging violations of FMLA, as well as claims of negligent infliction of emotional distress

(NIED), wrongful termination in violation of public policy, and a failure to provide notice under COBRA and ERISA. (Dkt. 1-1.) On July 21, 2016, Defendants removed the case to federal court. (Dkt. 1.) On May 1, 2017, Defendants filed the instant Motions for Summary Judgment. (Dkts. 15, 16.)

STANDARD OF REVIEW

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. Summary judgment is appropriate where a party can show that, as to any claim or defense, "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Summary judgment is "not a disfavored procedural shortcut," but is instead the "principal tool[] by which factually insufficient claims or defenses [can] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 247-48 (1986).

Rule 56 mandates summary judgment if the non-moving party fails to make a showing sufficient to establish the existence of an element which is essential to the non-moving party's case and upon which the non-moving party will bear the burden of proof at trial. *See Celotex*, 477 U.S. at 322. To show the material facts are not in dispute, a party may cite to particular parts of the record, or show that the materials cited in the record do

not establish the presence of a genuine dispute, or that the adverse party is unable to produce admissible evidence to support the fact. Fed. R. Civ. P. 56(c)(1)(A), (B); *see T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (citing *Celotex*, 477 U.S. at 322). The Court must consider "the cited materials," but it may also consider "other materials in the record." Fed. R. Civ. P. 56(c)(3).

The materials presented by the parties must be "presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). The Court does not make credibility determinations or weigh the evidence put forth by the non-moving party and it must view all of the evidence in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Hughes v. United States*, 953 F.2d 531, 541 (9th Cir. 1992).

DISCUSSION

Mr. Foruria alleges violations of FMLA, as well as a claim of negligent infliction of emotional distress (NIED) against Centerline and BCT. (Dkt. 1-1.) Mr. Foruria also alleges a claim of wrongful termination in violation of public policy against Centerline. (Dkt. 1-1.) Additionally, Mr. and Mrs. Foruria, allege a claim of failure to provide notice under COBRA and ERISA against Centerline and the Plan Administrator. (Dkt. 1-1.) Defendants seek summary judgment on all of Plaintiffs' claims.

1. The Family and Medical Leave Act Claims

The FMLA provides "eligible employees" up to twelve weeks of unpaid, protected leave in the event of a serious health condition, to care for a family member who is ill, or to care for a new baby. *Bachelder v. America West Airlines, Inc.*, 259 F.3d 1112, 1119-20 (9th Cir. 2001) (citing 29 U.S.C. §§ 2612(a), 2614(a)). "'[T]he FMLA creates two

interrelated, substantive employee rights: first, the employee has a right to use a certain amount of leave for protected reasons, and second, the employee has a right to return to his or her job or an equivalent job after using protected leave.'" *Sanders v. City of Newport*, 657 F.3d 772, 777 (9th Cir. 2011) (quoting *Bachelder*, 259 F.3d at 1122)).

Under 29 U.S.C. § 2615, courts recognize two theories of recovery on FMLA claims; interference and retaliation. *Sanders*, 657 F.3d at 777 (citing *Xin Liu v. Amway Corp*., 347 F.3d 1125, 1133 & n.7 (9th Cir. 2003); *Smith v. Diffee Ford-Lincoln-Mercury, Inc*., 298 F.3d 955, 960 (10th Cir. 2002)). Mr. Foruria alleges distinct violations of FMLA under both theories.

A. FMLA Interference Claims

The FMLA provides that "it is 'unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise' the substantive rights guaranteed by FMLA." *Sanders*, 657 F.3d at 777 (quoting 29 U.S.C. § 2614(a)(1)). Interference under § 2615(a)(1) has been interpreted broadly. A claim of interference not only encompasses the denial of FMLA rights, but also includes instances where an employer discourages an employee from using FMLA leave, retaliates against an employee for having exercised or attempted to exercise FMLA rights, or otherwise causes the employee to suffer an adverse employment action as a consequence of taking FMLA leave. *See Bachelder*, 259 F.3d at 1122-23.

In this case, Mr. Foruria argues that Centerline and BCT denied him FMLA benefits and interfered with his right to FMLA when they terminated his employment on December 10, 2015. (Dkts. 19, 20.)

"To ultimately prevail on an FMLA interference claim, a plaintiff 'need only prove by a preponderance of the evidence that [his] taking of FMLA-protected leave constituted a negative factor' in the employment decision. The plaintiff 'can prove this claim . . . by using either direct or circumstantial evidence, or both." *Andreatta v. Eldorado Resorts Corporation*, 214 F.Supp.3d 943, 953 (D. Nev. 2016) (quoting *Bachelder*, 259 F.3d at 1125).

In order to establish a prima facie case of interference, the plaintiff must show that (1) he was eligible for FMLA protection, (2) his employer was covered by FMLA, (3) he was entitled to leave under FMLA, (4) he gave his employer sufficient notice of his intent to take leave, and (5) his employer denied him FMLA benefits to which he was entitled. *Sanders*, 657 F.3d at 778 (citing *Burnett v. LFW, Inc.*, 472 F.3d 471, 477 (7th Cir. 2006)). For purposes of summary judgment, Defendants dispute the final element, whether Mr. Foruria was denied FMLA benefits to which he was otherwise entitled.

Defendants contend Mr. Foruria cannot show that he was entitled to FMLA benefits because: (1) Defendants had a legitimate reason to terminate Mr. Foruria and Mr. Foruria has not provided any evidence to suggest that his FMLA request was a factor in the termination decision and (2) Mr. Foruria cannot show he suffered prejudice from any alleged interference. (Dkt. 15-1, 16.)

(1) Legitimate Reason for Termination

Centerline and BCT contend that Mr. Foruria was terminated because he no longer met either employers' driver eligibility requirements. (Dkts. 15-1, 16.) Mr. Foruria asserts that there is a genuine issue of material fact as to whether he no longer met the driver

eligibility requirements precluding Defendants' Motions for Summary Judgment. (Dkts. 19, 20.)

The Department of Labor regulation 29 C.F.R. § 825.216(a) provides that "if an employee is laid off during the course of taking FMLA leave . . . [the] employer would have the burden of proving that an employee would have been laid off during the FMLA leave period, and, therefore, would not be entitled to restoration." 29 C.F.R. § 825.216(a)(1). The Ninth Circuit has held that "[a]lthough the FMLA generally confers the right of reinstatement, an employer may still terminate an employee during [his] leave if the employer would have made the same decision had the employee not taken leave." *Gambini v. Total Renal Care, Inc.*, 486 F.3d 1087, 1097 (9th Cir. 2007). If the employee would have been terminated regardless of his FMLA leave, the employee cannot recover on his interference claim because "the employee is not entitled to any rights, benefits, or positions they would not have been entitled to had they not taken leave." *Bushfield v. Donahoe*, 912 F.Supp.2d 944, 955 (D. Idaho 2012) (citing *Xin Liu*, 347 F.3d at 1132).

Here, Defendants have met their burden and set forth sufficient evidence to support a finding that Mr. Foruria would have been laid off during the FMLA period for reasons wholly unrelated to his FMLA status. These facts are not reasonably subject to dispute.

Centerline runs Motor Vehicle Reports (MVRs) upon an employee's hire and again every 6 months thereafter. (Dkt. 15-1.)[2] Centerline ran Mr. Foruria's MVR on December 9, 2015 when prompted by a reminder in its software. (Dkt. 15-1.) The MVR showed a following too closely conviction from November 2015 and a speeding citation. (Dkts. 15-1, 15-8.) Based on this information, Centerline determined that Mr. Foruria was no longer qualified to be a driver because his record showed a major violation. (Dkt. 15-1, 22.) Centerline informed BCT of its determination and advised BCT to make its own eligibility determination under its standards. (Dkt. 15-1, 16.)

Upon review, BCT determined that Mr. Foruria was no longer eligible under its Safe Driver Standards due to the eleven points allocated for a December 2014 preventable accident while on a BCT job, his speeding violation, and his following too closely conviction. (Dkt. 16, 23.) BCT's Safe Driver Standards only permit drivers to have a maximum of ten points to remain eligible. (Dkt. 16, 23.)

Mr. Foruria argues that Centerline's conclusion was in error relying on the Federal Motor Carrier Safety Administration (FMCSA) regulations, which do not classify a following too closely conviction while in a personal vehicle as a major violation. (Dkt. 19.) While, Centerline's Driver Eligibility Requirements make reference to the FMCSA regulations, they also clearly define major violations as including following too closely.

[2] Mr. Foruria's contends that Centerline only runs MVRs once a year, as opposed to Centerline's assertion that they are run every six months. However, the record shows that Centerline in fact ran Mr. Foruria's MVR in December 2014 (his "hiring" MVR), June 2015, and December 2015. (Dkt. 15-8 Ex. C.)

Centerline policy provides that drivers "cannot have any major violation within the last 36 months" and a major violation is "a citation or conviction, in any type of vehicle, for failure to obey any law or ordinance" including "following too closely." (Dkt. 15-8.) Because the FMCSA regulations are not the determining factor in Centerline's policy, the FMCSA definition of a major violation is not relevant to the Court's consideration and fails to create a genuine dispute of fact on this issue.

As to BCT's determination, Mr. Foruria challenges BCT's finding that he has eleven points, making him ineligible under its Safe Driver Standards. (Dkt. 20.) Mr. Foruria argues that he should have only been assessed nine points, which would have kept him within the ten point requirement. (Dkt. 20.) Mr. Foruria's math is in error based on BCT's point system. BCT contends that, per its Safe Driver Standards, Mr. Foruria was assessed three points for the "preventable accident" in December 2014," three points for the speeding citation, and five points for the second "preventable accident" in three years with the following too closely conviction. (Dkt. 23.)

Mr. Foruria also contends that even if BCT and Centerline's point totals are accurate, BCT and Centerline erred because his defensive driving course removed the points assessed for the following too closely conviction from his license. (Dkt. 20.) However, the points removed from his license were solely for the use of the Idaho Transportation Department and have no impact on BCT or Centerline policy. (Dkt. 16-4, Ex. 18.)

Finally, Mr. Foruria asserts that even if Centerline and BCT had a reason to terminate him, he maintains that his FMLA request was a negative factor in their decisions to terminate him and this is all that is needed to survive summary judgment. (Dkt. 20.) *See Andreatta*, 214 F.Supp.3d at 953. In support of this argument, Mr. Foruria relies on: (1) an email exchange between a BCT employee and a Centerline employee and (2) his wife's deposition testimony. Neither creates a genuine dispute of fact on this issue.

First, the email exchange reflects that BCT sought to fill Mr. Foruria's position after it determined that he was "disqualified based on points." (Dkt. 19-4, Ex. I.) FMLA protects an eligible employee's "right to return to his or her job or an equivalent job after using protected leave," but it does not require that an employer leave his position vacant during his absence. *Bachelder*, 259 F.3d at 1122. As such, even if Mr. Foruria would have taken and returned from FMLA leave, BCT was within its legal rights to request to fill his position until he returned. (Dkt. 19-4, Ex. I.) Furthermore, reading the entire email string it is impossible to infer any causal connection between Mr. Foruria's FMLA request and BCT's decision to terminate him. Instead, BCT is solely concerned with filling the position at least until April. The email is not supportive of Plaintiffs' argument that Mr. Foruria's FMLA request was a negative factor in the Defendants' decisions.

Second, Mr. Foruria relies upon Ms. Foruria's deposition testimony wherein she testified that the reason Mr. Foruria was terminated was because BCT "needed to fill the truck and David was injured . . . they couldn't wait for David to heal." (Dkt. 20, citing to Carol Foruria Depo. at 62.) Ms. Foruria's deposition testimony does not create a genuine issue of fact. Mr. Foruria has not shown that Ms. Foruria has personal knowledge regarding

BCT or Centerline's termination decisions. And again, Defendants were under no obligation to hold Mr. Foruria's position open while he was on leave.

In short, Mr. Foruria has provided no evidence in support of his position that his FMLA request was a negative factor in either Defendants' decisions to terminate him. Instead, the undisputed facts reflect that Mr. Foruria was terminated because he was no longer eligible to be a driver for Centerline or BCT based on their eligibility policies.

2. Prejudice

Centerline and BCT argue that even if they denied Mr. Foruria FMLA benefits to which he was entitled, his interference claim still fails because he cannot show he was prejudiced by the alleged violation because he would not have been able to return to work upon the expiration of FMLA leave. (Dkt. 15-1, 16.) Mr. Foruria asserts that he does not need to prove harm to establish his prima facie interference claim, and even if he did it is a disputed issue of material fact as to whether he would have been able to return to work. (Dkt. 20.)

Even if an employer does violate an employee's FMLA rights, the employee cannot obtain relief unless he can also prove he was prejudiced by the violation. *See Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 89 (2002); *see also Liston v. Nevada ex rel. its Dept. of Business and Industry*, 311 Fed.Appx. 1000, 1002 (9th Cir. 2009) (holding that an employee's FMLA interference claim still failed even if the employer interfered with the employee's FMLA rights because there was no evidence of prejudice where the employee was terminated due to unauthorized absences unrelated to her FMLA leave). Thus, if an

employee cannot perform the essential functions of his position before the FMLA leave period ends, he has not been prejudiced. *See Ragsdale*, 535 U.S. at 90.

Mr. Foruria contends that his medical card was valid through June 22, 2016; his intrastate CDL license was active and valid, which allowed him to drive within Idaho; and he was released to work, without restriction, on February 17, 2016. (Dkt. 20.) However, these statements are conclusory and unsupported by any evidence and are contradicted by Mr. Foruria's deposition testimony. Mr. Foruria cannot rely on such statements to survive summary judgment. *See Rivera v. Nat'l R.R. Passenger Corp*., 331 F.3d 1074, 1078 (9th Cir. 2003) ("Conclusory allegations unsupported by factual data cannot defeat summary judgment.")

Mr. Foruria testified during his deposition that it took 9 to 11 months for his eye to heal 100%, which the Department of Transportation required in order for Mr. Foruria to return to driving commercial trucks. (Dkt. 15-4, Foruria Depo. at 73-74.) He further testified that he could not have returned to his position twelve weeks after his eye injury. (Dkt. 15-4, Foruria Depo. at 97-98.) Finally, he confirmed that he was not released to commercial truck driving until November 2016 when he started applying for such work again. (Dkt. 15-4, Foruria Depo. at 105-106.)

This testimony makes clear that Mr. Foruria would not have been able to return to work as a commercial truck driver with Centerline and BCT upon the expiration of his FMLA leave. Therefore, he did not suffer any prejudice as a result of his termination, even if such termination violated his rights under FMLA.

In short, Mr. Foruria's FMLA interference claim fails. There is no dispute of fact that would preclude the Court from finding that Defendants had a legitimate reason to terminate Mr. Foruria; Mr. Foruria's FMLA request was not a negative factor in the termination decision; and Mr. Foruria did not suffer prejudice from any alleged interference. Accordingly, Defendants are entitled to summary judgment on Plaintiffs' FMLA interference claim.

B. FMLA Retaliation Claim

Department of Labor regulation 29 C.F.R. § 2615(a)(2) prohibits "discriminat[ion] against any individual for opposing any practice made unlawful" under the FMLA. 29 C.F.R. § 2615(a)(2). Mr. Foruria does not claim he opposed any practice made unlawful under the FMLA and concedes that the proper analysis for his FMLA claim is under 29 U.S.C. § 2615(a)(1) as unlawful interference claim. Accordingly, Defendants are entitled to summary judgment on Mr. Foruria's FMLA retaliation claim.

2. Negligent Infliction of Emotional Distress Claim (NIED)

Mr. Foruria argues that his NIED claim arises from his termination and Centerline and BCT's breach of their duties to exercise ordinary care by way of their adverse actions after his workplace injury, which caused him emotional distress. (Dkts. 19, 20.) Centerline and BCT argue that Mr. Foruria's claim fails because there is no cause of action for NIED because of mere termination. (Dkts. 15-1, 16.) Additionally, Defendants assert that Mr. Foruria has not only failed to submit any admissible evidence of other alleged adverse actions, but his Complaint is devoid of any allegations of pre-termination adverse actions or breach. (Dkts. 22, 23.)

In Idaho, a claim for negligent infliction of emotional distress requires the plaintiff to establish the following five elements: (1) the existence of a duty; (2) a breach of that duty; (3) proximate cause; (4) damages; and (5) physical manifestation of the injury. *See Johnson v. McPhee,* 210 P.3d 563, 574 (Idaho Ct. App. 2009); *see also Bollinger v. Fall River Rural Elec. Co-op., Inc.*, 272 P.3d 1263, 1273 (Idaho 2012). A claim of NIED is not automatically precluded in the employment context. *See Frogley v. Meridian Joint Sch. Dist. No. 2*, 314 P.3d 613, 625 (Idaho 2013). However, "the mere termination of an at-will employee—without more—does not constitute the breach of duty sufficient to support an NIED claim." *Bollinger*, 272 P.3d at 1274.

In support of his NIED claim, Mr. Foruria relies on his blanket assertion in his Amended Complaint that "Defendants' actions toward Mr. Foruria in the manner in which they addressed his workplace injury described herein, and subsequently terminating him, were negligent and/or intentional which caused severe emotional distress . . ." (Dkt. 1-1, p. 35 ¶ 86.) However, the Court finds no allegations, let alone evidence, of any adverse actions taken by Centerline or BCT, aside from their termination of Mr. Foruria. Mr. Foruria's blanket assertion in his Response in Opposition that adverse action was taken does not raise a genuine issue of material fact and Mr. Foruria cannot "rest upon mere allegations or denials of his pleading" in order to survive summary judgment. *See Anderson*, 477 U.S. at 248. Thus, Defendants are entitled to summary judgment on Mr. Foruria's NIED claim.

3. Wrongful Termination in Violation of Public Policy Claim

Mr. Foruria alleges Centerline terminated him because he filed a worker's compensation claim, which violates public policy. (Dkt. 19.)

In Idaho, "[u]nless an employee is hired pursuant to a contract which specifies the duration of the employment, or limits the reasons why the employee may be discharged, the employee is 'at will.'" *Venable v. Internet Auto Rent & Sales, Inc*., 329 P.3d 356, 360 (Idaho 2014) (citations omitted). An at-will employee, therefore, can be terminated "at any time [or] for any reason without creating liability." *Edmondson v. Shearer Lumber Products*, 75 P.3d 733, 737 (Idaho 2003). However, Idaho has long recognized a narrow exception to this general principle, allowing at-will employees to bring a claim for wrongful termination "where the employer's motivation for the termination contravenes public policy." *Bollinger*, 272 P.3d at 1271.

"A termination contravenes public policy 'only where an employee is terminated for engaging in some protected activity, which includes (1) refusing to commit an unlawful act, (2) performing an important public obligation, or (3) exercising certain legal rights and privileges.'" *Venable*, 329 P.3d at 361 (quoting *Bollinger*, 272 P.3d at 1271)). In order to establish a wrongful termination claim, the employee must show (1) that he was engaged in a legally protected activity, and (2) that a causal relationship exists between his termination and the legally protected activity. *See Bollinger*, 272 P.3d at 1271.

"[A]t the summary judgment stage, Idaho courts carefully review the record to determine whether reasonable minds could come to differing conclusions regarding why the adverse action was taken." *Harris v. Treasure Canyon Calcium Company*, 132

F.Supp.3d 1228, 1238-39 (D. Idaho 2015) (citing *Ray v. Nampa Sch. Dist. No. 131*, 814 P.2d 17, 21-22 (Idaho 1991); *Bollinger*, 272 P.3d at 1272-73). In order for a plaintiff to withstand summary judgment on a claim of wrongful termination, he "must produce more than a scintilla of evidence, such that a rational trier of fact could reasonably find that [he] was terminated because of [his] worker's compensation claim." *Harris*, 132 F.Supp.3d at 1240.

In this case, Mr. Foruria's claim fails because he has not demonstrated a genuine dispute of fact regarding causation and no reasonable juror could find that he was terminated because of his worker's compensation claim.

A. Causation

For purposes of bringing a wrongful termination claim, filing a worker's compensation claim is a protected activity. *See Thomas v. Medical Center Physicians, P.A.*, 61 P.3d 557, 565 (Idaho 2002). Moreover, as a general rule, causation is an issue of fact reserved for the jury. *Bollinger*, 272 P.3d at 1271. However, causation "may be decided as a matter of law where there exists no genuine issue of fact." *Id.* at 1272.

Mr. Foruria relies solely upon temporal proximity to establish causation. Mr. Foruira asserts that he reported his injury and intention to file for worker's compensation benefits to Centerline in late November and again in early December and was terminated on December 10th, less than two weeks after his first report. (Dkt. 19.)

In some cases, causation can be established based on mere temporal proximity. *See Clark County School Dist. v. Breeden*, 532 U.S. 268, 273-74 (2001). Nevertheless, in this case, temporal proximity is not sufficient to create a dispute of fact. This claim cannot be

examined in isolation and, given the weight of the record in this case, the Court finds no reasonable juror could find that Mr. Foruria was terminated due to his report of a workplace injury and his intent to file for worker's compensation benefits. Rather, Mr. Foruria was terminated because of an automated and uniform application of Defendants' eligibility standards for drivers.

B. Mr. Foruria Was Terminated for Legitimate Reasons.

The undisputed facts reflect that Mr. Foruria was terminated because he failed to meet Centerline's eligibility requirements. The record reflects that Mr. Foruria was subject to the same policies as every other Centerline driver. Centerline ran MVRs for all of its drivers at the time the driver was hired and every six months thereafter, which occurred in December 2014, June 2015, and December 2015 in Mr. Foruria's case. (Dkt. 15-8.) When these uniform standards were applied to Mr. Foruria, he failed them.

Mr. Foruria has not set forth any evidence to create a dispute of fact on this claim. The Court finds that while Mr. Foruria filed for FMLA and reported his injury and intent to file for worker's compensation benefits in close temporal proximity to his termination that is simply insufficient proof to establish causation in this case. Mr. Foruria has not provided even a scintilla of evidence to suggest his termination was related to anything other than the fact that he no longer met Centerline's eligibility requirements. Similarly, he has not shown he was treated differently from other drivers because of his application for FMLA and worker's compensation benefits. No reasonable juror could reach a different conclusion.

In short, Centerline is entitled to summary judgment on this claim. Mr. Foruria has failed to create a genuine dispute of fact on his claim that he was terminated in violation of public policy.

4. Failure to Notify on COBRA and Employee Retirement Income Security Program (ERISA) Claim

Defendant Centerline asserts it sent Plaintiffs COBRA notices on two occasions; therefore, there can be no failure to notify. (Dkt. 15-1, 22.) Plaintiffs argue that Centerline failed to timely notify them of their COBRA benefits because it sent the notice to their physical address instead of their P.O. Box. (Dkt. 19.)

ERISA regulation, 29 U.S.C. § 1166 requires that "[t]he employer of an employee under a plan must notify the administrator of a qualifying event . . . within 30 days . . . of the qualifying event" and after receiving such notification, the administrator shall notify any qualified beneficiary within fourteen days of their COBRA benefit rights. 29 U.S.C. § 1166(a)(2), (4), (c). In order to comply with 29 U.S.C. § 1166, Centerline was required to make a "good faith" attempt to notify Plaintiffs of their COBRA benefits by sending notice to their last known address. *See Degruise v. Sprint Corp.*, 279 F.3d 333, 337 (5th Cir. 2002); *United States v. McGlory*, 202 F.3d 664, 673 (3rd Cir. 2000).

Plaintiffs contend that Mr. Foruria filled out a change of address form and emailed it to Centerline on February 6, 2016, updating their address to the P.O. Box. (Dkt. 19; Dkt. 19-1, Plaintiffs' Statement of Disputed Facts ¶ 42.) However, Centerline sent its first COBRA notice via CONEXIS on January 13, 2016, therefore the last known address at

that time was Plaintiffs' physical address at 542 Tyler Road, Emmett, ID 83617-4247. (Dkt, 15-1, Dkt. 15-8, Ex. H.)

Based on this record, the Court finds Centerline complied with the notice requirements of 29 U.S.C. § 1166 by sending the notice via mail to Plaintiffs' physical address on file at the time. Whether Plaintiffs received the notice or not is not material to a determination of Centerline's compliance with COBRA requirements; the law only requires that an employer make a "good faith" effort to provide notification. *See Maya v. Inspro Corp.*, 2004 WL 2496635, at *1 (N.D.Cal. Nov. 3, 2004).[3]

In short, Defendant Centerline and the Plan Administrator are entitled to summary judgment on Plaintiffs' failure to notify claims.

[3] Centerline argued it also sent a second set of notices, in September 2016 upon commencement of this lawsuit, via Fed-ex to Plaintiffs' physical address, to their P.O. box, and to their email address, which Ms. Foruria acknowledged receipt of via each delivery method in her deposition. (Dkt. 15-1, 22.) However, the Court finds the first notice satisfies the COBRA notice requirements and therefore does not need to address the second set of notices.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Defendants Motions for Summary Judgment (Dkts. 15, 16) are **GRANTED** and this case is dismissed in its entirety.

DATED: November 6, 2017

Edward J. Lodge

United States District Judge