BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BARBARA KELLY, Claimant, v. BLUE RIBBON LINEN SUPPLY, INC., Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2013-024694** **FINDINGS OF FACT, CONCLUSION OF LAW, ORDER AND DISSENTING OPINION** Filed September 26, 2014

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael Powers. In lieu of a hearing, the parties submitted the issue for resolution on a Stipulation of Facts and briefing. Michael Kessinger of Lewiston represented Claimant, and Wynn Mosman of Moscow represented Defendants. The matter came under advisement on May 29, 2014. The undersigned Commissioners have chosen not to adopt the Referee's recommendation and hereby issue their own findings of fact, conclusions of law and order.

ISSUE

The sole issue to be decided is whether Claimant is entitled to applicable workers' compensation benefits for injuries suffered in an automobile accident while returning from an IME scheduled by Surety related to Claimant's ongoing workers' compensation claim.

SYNOPSIS OF CASE AND CONTENTIONS OF THE PARTIES

On September 16, 2013, Claimant suffered a covered industrial accident while working

for Employer. Pursuant to the ensuing workers' compensation claim, Surety ordered Claimant to attend an IME in Post Falls, Idaho on November 15, 2013. On her return trip home to Lewiston from the IME, Claimant was involved in an automobile accident, which resulted in further injuries.

The parties dispute whether Claimant's injuries sustained in the auto accident would be subject to workers' compensation benefits. Claimant argues under the theory of "compensable consequences" the injuries would be covered. Defendants argue the accident was an "intervening, independent, responsible, and culminating cause" and therefore not subject to workers' compensation coverage.

RECORD FOR REVIEW

The record in this matter consists of the Stipulation of Facts and legal briefing submitted by the parties.

STIPULATED FACTS

The undisputed and stipulated facts are set forth below verbatim from the parties' Stipulation of Facts.

1. On September 16, 2013, Claimant Barbara Kelly (hereafter Claimant) was an employee of Blue Ribbon Linen Supply, Inc. (hereafter Blue Ribbon), in Lewiston, Idaho. At said time, Blue Ribbon was insured for its obligations under the Idaho Workers' Compensation Act by the Idaho State Insurance Fund (hereafter Surety).

2. On or about September 16, 2013, Claimant, Employer, and Surety were subject to the provisions of Idaho's Worker's Compensation Law.

3. Claimant suffered a compensable workers' compensation injury when a cart rolled over her left foot while in the course and scope of her employment with Blue Ribbon on September 16, 2013.

4. Surety paid medical and time loss benefits to Claimant as a result of the injury to her left foot.

5. On or about November 8, 2013, Julie Estes, an agent of Surety, sent Claimant a letter, which read as follows:

> We [Surety] have arranged for you to be seen in an independent medical evaluation with Robert Friedman. This appointment is scheduled for November 15, 2013, at 1:00 p.m. and will be held at Kootenai Health Plaza, which is located at 1300 East Mullan Avenue, Post Falls, Idaho.
>
> Please make the necessary arrangements to keep this appointment and **bring copies of all x-rays/MRI films with you**. Failure to do so may result in the termination of benefits and the responsibility for any "no show" charges.
>
> You may submit a report of all travel expenses to this office for reimbursement. This should include the date traveled, destination, and round trip mileage.

6. It is approximately 125 miles each way from Claimant's workplace in Lewiston, Idaho, to Post Falls, Idaho.

7. Dr. Robert Friedman performs medical evaluations in Lewiston, Idaho. Appointments with Dr. Friedman were available in November in Post Falls and in December in Lewiston. Claimant was scheduled for the November appointment in Post Falls.

8. On November 15, 2013, Claimant traveled to Post Falls, Idaho, for the surety-scheduled medical evaluation. On said date she was still an employee of Blue Ribbon and was receiving time loss benefits from Surety.

9. Directly after meeting with Dr. Friedman, Claimant began her return trip from Post Falls, Idaho, to Lewiston.

10. Claimant did not make any stops or take any detours on her way home from the appointment with Dr. Friedman.

11. At 3:50 p.m. on November 15, 2013, on US 95 approximately five miles south of

Potlatch, it was snowing and the road was covered with snow. At said location, Claimant was southbound in her Ford Expedition when a northbound Ford F150 lost traction, crossed the centerline, and collided head-on with Claimant's vehicle. Claimant's actions did not cause or contribute to the collision.

12. As a result of the automobile collision, Claimant suffered severe physical injuries to her lower extremities. Due to the extent of her injuries, Claimant's doctor restricted her from any weight-bearing on her lower extremities until further notice. As a result of the crash, Claimant was in a skilled nursing facility in Lewiston, Idaho, until February 28, 2014.

DISCUSSION AND FURTHER FINDINGS

13. The provisions of the Idaho 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).

14. Pursuant to Idaho Code § 72-102(18)(a) a claimant must prove not only that she was injured, but also that the injury was caused by an accident "arising out of and in the course of" her employment. In Idaho, the seminal case treating what it is an injured worker must prove in this regard is *Eriksen v. Nez Perce County*, 72 Idaho 1, 235 P.2d 736 (1951). Although the Idaho rule did not originate in *Eriksen*, the rule is given its most lucid expression in that case. Quoting from the Oregon case of *Larsen v. State Industrial Accident Commission*, 135 Or. 137, 295 P. 195 (1931), the *Eriksen* court explained what it means for an accident to arise out of and occur in the course of employment:

> It is sufficient to say that an injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It arises 'out of' the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting

> injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

Eriksen v. Nez Perce County, 72 Idaho at 6 (1951). This explanation has been cited with approval in almost every subsequent Idaho case in which "arising" and "course" issues are discussed. See *Colson v. Steele,* 73 Idaho 348, 252 P.2d 1049 (1953); *Kiger v. Idaho Corporation*, 85 Idaho 424, 380 P.2d 208 (1963); *Wilder v. Redd*, 111 Idaho 141, 721 P.2d 1240 (1986); *O'Loughlin v. Circle A Construction*, 112 Idaho 1048, 739 P.2d 347 (1987); *Evans v. Hara's, Inc.*, 123 Idaho 473, 849 P.2d 934 (1993); *Kessler on behalf of Kessler v. Payette County*, 129 Idaho 855, 934 P.2d 28 (1997); *Dinius v. Loving Care and More, Inc.*, 133 Idaho 572, 990 P.2d 738 (1999); *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000). However, that portion of the *Eriksen* rule which excludes from coverage injuries caused by exposure to a risk to which the workman would have been equally exposed apart from employment has been implicitly, if not explicitly, overruled by *Spivey v. Novartis Seed, Inc.*, 137 Idaho 29, 43 P.3d 788 (2002), and *Vawter v. United Parcel Service, Inc.*, 155 Idaho 903, 318 P.3d 893 (2014). In *Spivey*, the claimant suffered a shoulder injury as the result of reaching over a conveyor belt to remove a small pebble. Defendants urged the Court to apply the rule explained in *Eriksen*, and so conclude that Spivey could not prevail where it was shown that her employment subjected her to the same risk of injury to which she was exposed apart from her employment. Defendants argued that in order to prevail Spivey must demonstrate that her

employment exposed her to a risk of injury that was greater than the risk to which she was exposed apart from her employment. The Court rejected this argument, concluding that Idaho law no longer supports the proposition that a claimant must demonstrate that her employment subjects her to a "greater risk" of injury before she can recover benefits. After *Spivey*, *supra*, it seems clear that where the risk of injury is one to which the claimant is equally exposed both within and without the workplace, this will not be an impediment to compensability, as might be suggested by the *Eriksen* rule. However, *Spivey* does nothing to denigrate the long followed rule that for an injury to be compensable a sufficiently strong causal connection must exist between the employment and the injury that a reasonable person would conclude that employer should bear responsibility for the injury.

15. The question presented by the facts before us is whether the injuries Claimant suffered as a consequence of the motor vehicle accident of November 15, 2013, can be said to arise out of, and occur in the course of her employment. The only connection between Claimant's employment and the injuries in question is the fact that Claimant was returning home following an Idaho Code § 72-433 medical exam at the time the motor vehicle accident occurred. Idaho Code § 72-433 provides in pertinent part:

> After an injury or contraction of an occupational disease and during the period of disability the employee, if requested by the employer or ordered by the commission, shall submit himself for examination at reasonable times and places to a duly qualified physician or surgeon. The employee shall be reimbursed for his expenses of necessary travel and subsistence in submitting himself for any such examination and for loss of wages, if any. For purposes of this section, the reimbursement for loss of wages shall be at the employee's then current rate of pay if the employee is then working; otherwise, such reimbursement shall be at the total temporary disability rate. Reimbursement for travel expenses, if the employee utilizes a private vehicle, shall be at the mileage rate allowed by the state board of examiners for state employees; provided, however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip distance of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel.

Therefore, if requested by the employer, the injured worker shall submit to such examination.

16. An injured worker who fails to comply with the employer's request for a medical examination faces curtailment of benefits and suspension of workers' compensation proceedings as specified by Idaho Code § 72-434. That section provides:

> If an injured employee unreasonably fails to submit to or in any way obstructs an examination by a physician or surgeon designated by the commission or the employer, the injured employee's right to take or prosecute any proceedings under this law shall be suspended until such failure or obstruction ceases, and no compensation shall be payable for the period during which such failure or obstruction continues.

17. The injuries for which Claimant seeks benefits are not those directly caused by the admittedly compensable accident of September 16, 2013. Rather, the injuries for which Claimant seeks benefits are, at most, a remote consequence of the original work injury. Claimant contends, however, that because she was required by statute to attend the Idaho Code § 72-433 exam, the injuries she sustained as a consequence of the motor vehicle accident are a compensable, albeit remote, consequence of the original work injury.

18. As the parties have discovered, there is an Idaho case very nearly on point to the instant matter, *Kiger v. The Idaho Corporation*, 85 Idaho 424, 380 P.2d 208 (1963). Before discussing *Kiger*, however, it is helpful to review several of the cases cited in *Kiger*, and upon which the *Kiger* court relied in reaching its decision.

19. In *Farmers' Gin Co. et al. v. Cooper et al.*, 147 Okl. 29, 294 P. 108 (1930), the claimant suffered an injury to his eye while working on a cotton gin. A little less than a month later, claimant was returning from receiving medical treatment for his eye injury when he was involved in a motor vehicle accident as a result of which he sustained a fractured patella. The Oklahoma Industrial Commission determined that claimant's eye injury was one arising out of

and in the course of his employment and that the patellar injury, too, was compensable, because it resulted from the eye injury. Applying a rule defining what it means for an injury to both arise out of and be in the course of employment very similar to the *Eriksen* rule, the *Farmers' Gin Company* Court rejected the notion that the knee injury could be said to be an injury arising out of and in the course of employment. In so doing, the Court recognized that claimant's invitation to find the knee injury compensable was, at its heart, an invitation to adopt a "but for" test of causation:

> Did the last accident arise "out of" the employment? We hold it did not, for it was not the result of the exposure occasioned by the nature of the employment, but, on the other hand, it was the result of a condition common to the neighborhood – an ordinary automobile accident. It may just as well have been a bolt of lightening. It was not incidental to the character of the business in which claimant was employed. The highway collision was the proximate cause of the accident; it was an intervening cause. *Southern Surety Co. v. Galloway*, 89 Okl. 45, 213 P. 850. Consequently we can and do say, without hesitation, that the last injury did not arise out of the employment. The latter injury is no more the result of the former accident than it was the result of claimant's having been born. It is equally clear that but for either event claimant would not have been where he was when last stuck, but such is not the test. The decisive fact is that the latter accident was in no sense due to the employment, nor did it result from a risk reasonably incident to the employment and there is a severance rather than a causal connection between the conditions under which the work was required to be performed and the resulting injury.
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> *Farmers' Gin Co. et al. v. Cooper et al.*, 292 P. at 110 (1930).

20. In *Linder v. City of Payette*, 64 Idaho 656, 135 P.2d 440 (1943) Decedent suffered an original work-related injury to his left arm in March of 1941. As a result of this injury, he was placed in a plaster cast extending from the shoulder to the fingers, holding the elbow rigid and the forearm at a right angle to the upper arm. While being so treated, Decedent and a companion went fishing from a small boat at Sage Hen Reservoir. In the course of their outing, the boat capsized and Decedent drowned. Decedent's survivors contended that they were entitled to death benefits on the theory that the original accident was the proximate cause of

Decedent's death because the cast on Decedent's arm hindered him in his ability to swim or otherwise save himself after being thrown into the water. As to Claimant's speculation in this regard, the Court noted that there was no proof on the exact cause of Decedent's death.

21. On the question of whether or not the boating accident constituted an intervening cause breaking the chain of causation between the original work accident and Decedent's death, the Court stated:

> We accept as correct appellant's proposition of law that the definition and determination of "proximate cause" in the field of torts is applicable herein. A recognized concomitant is that if there occurs, after the initial accident and injury, an intervening, independent, responsible, and culminating cause, the latter occurrence becomes the proximate cause.
>
> 'The proximate cause of an event must be understood to be that which in a natural and continuous sequence, *unbroken by a new cause*, produces that event and without which that event would not have occurred.' [Emphasis added.] (*Pilmer v. Boise Traction Co., Ltd*., 14 Ida. 327, at 341, 94 P. 432.)
>
> The law regards the one as the proximate cause of the other, without regard to the lapse of time *where no other cause intervenes or comes between* the negligence [initial injury] charged and the injuries received to contribute to it. *There must be nothing to break the causal connection* between the alleged negligence [first accident and injury] and the injuries [death].' [Emphasis added.] (*Antler v. Cox*, 27 Ida. 517, at 527, 149 P. 731.)
>
> It must be clearly kept in mind that the essential causal connection which must not be broken is, not that between the concededly compensable accident and the direct injury therefrom (*Brink v. H. Earl Clack Co*., 60 Ida.730, 96 P.(2d) 500), but between the initial accident and injury and a subsequent and otherwise disconnected injury having no relationship whatever to decedent's employment.
>
> *Linder v. City of Payette*, 64 Idaho at 658-59 (1943).

The Court concluded that the facts of the case were sufficient to support the conclusion of the Industrial Accident Board that the boating accident constituted an intervening cause which broke the causal connection between the original work accident and Decedent's death.

22. In *Kiger v. The Idaho Corp.*, *supra*, the claimant was injured on September 16, 1960 when she slipped and fell at her place of employment while carrying flats of eggs. Kiger suffered injuries to her right lower back as a result of the accident. Following the accident she began to treat with Dr. Hawkins. On October 10, 1960, while driving to Dr. Hawkins' office for treatment, Claimant was involved in an automobile accident which caused severe neck and shoulder injuries. The Industrial Accident Board found that the injuries claimant sustained as the result of the automobile accident did not arise out of and in the course of claimant's employment and were therefore not compensable, notwithstanding the fact that the injury would not have occurred if claimant had not been seeking treatment for the injuries associated with the original accident.

23. On appeal, the Court stated that in order to determine whether or not the injuries caused by the automobile accident are compensable, it must be determined whether that injury was one arising out of and in the course of claimant's employment. In discussing the "arising" and "course" requirements, the Court quoted extensively from the *Eriksen* rule discussed above. The Court noted that the only connection between claimant's employment and the injuries she received as a result of the motor vehicle accident was the fact that she was on her way to receive treatment for her admittedly work-related low back injury at the time the motor vehicle accident occurred. Citing the reasoning of the court in *Farmers' Gin Co. v. Cooper*, with approval, the *Linder* court ruled that the motor vehicle accident at issue was not due to claimant's employment, and did not result from a risk reasonably incident to her employment. Rather, the motor vehicle accident constituted an intervening cause which broke the chain of causation between the original work accident and the injuries claimant received as a result of the motor vehicle accident. Thus, even though the motor vehicle accident would not have occurred "but

for" the fact that claimant originally suffered a slip and fall injury at work, employer cannot be held responsible for the consequences of the motor vehicle accident because legal or proximate cause cannot be established.

24. We believe that *Kiger* is controlling, and the automobile accident in this case, as with the automobile accident at issue in *Kiger*, constitutes an intervening cause breaking the chain of causation between Claimant's employment and the motor vehicle accident. Of course, it is not lost on us that the facts of this case are slightly different than those before the court in *Kiger*. In *Kiger* claimant was on her way to receiving medical treatment at the time of the motor vehicle accident, whereas Ms. Kelly was on her way home after attending a surety-required Idaho Code § 72-433 exam. Had she refused to attend this exam, or had she otherwise frustrated the purposes of surety to obtain such an exam, she could have faced curtailment of workers compensation benefits and the suspension of proceedings before the Commission. It is argued that these facts warrant a different result than that which obtained in *Kiger*. However, we fail to see why this distinction should result in a different outcome, tempting though it may be. After all, rather than arrange an Idaho Code § 72-433 exam at a time and place more convenient to Claimant, surety arranged for an exam far removed from Claimant's residence, at a time of year that would expose her to dangerous conditions while traveling. While Claimant could have petitioned the Industrial Commission for relief from the scheduled exam, and therefore cannot be said to have been without recourse, she failed, for whatever reason, to pursue this, and so suffered the injuries that she assuredly would not have suffered "but for" the Idaho Code § 72-433 exam. In this case, as in *Kiger*, a causal connection does exist between the original work-related injury and the motor vehicle accident because the motor vehicle accident would not have happened but for the original work-related injury. However, like *Kiger*, Claimant's injuries

were caused by the actions of a negligent third party which severed that causal connection, even if one accepts the proposition that the causal connection was stronger under the facts of this case. The intervening cause is the true proximate cause of Claimant's injuries, not her employment or the subject accident.

CONCLUSION OF LAW AND ORDER

1. Claimant is not entitled to Workers' Compensation benefits for the injuries that she suffered as the result of the November 15, 2013 motor vehicle accident.

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

Dated this _26th_ day of __September____, 2014.

INDUSTRIAL COMMISSION

_/s/_____
Thomas P. Baskin, Chairman

_/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

COMMISSIONER R.D. MAYNARD DISSENTING:

After reviewing the record and controlling Idaho case law on the matter, I respectfully dissent from the analysis and conclusions of the majority.

The majority begins its analysis by acknowledging Idaho precedent regarding whether an injury caused by an accident arose out of and in the course of employment, citing *Ericksen v. Nez Perce County*, 72 Idaho 1, 235 P.2d 736 (1951). The majority then discusses *Spivey v. Novartis Seed Inc.*, 137 Idaho 29, 43 P.3d 788 (2002) and goes a step further by "concluding that Idaho law no longer supports the proposition that a claimant must demonstrate that her employment subjects her to a 'greater risk' of injury before she can recover benefits." Majority Decision ¶ 14.

The majority concedes a connection between Claimant's employment and the injuries in question because Claimant was returning home following a mandatory medical exam, pursuant to Idaho Code § 72-433, at the time the motor vehicle accident (MVA) occurred. My colleagues further concede that an injured worker who fails to comply with an employer's request for an independent medical exam (IME) risks curtailment of benefits and suspension of workers' compensation proceedings. Idaho Code § 72-434. The law requires, and the stipulated facts reflect, that Claimant would be reimbursed for her travel expenses. Idaho Code § 72-433(1) also requires reimbursement for any loss of wages incurred while submitting to an IME. Having cited Idaho law and undisputed facts that would <u>support</u> compensation of Claimant's MVA injuries, the majority then goes <u>outside</u> Idaho law in an attempt to justify its denial of benefits.

After reviewing what it considers to be compelling case law, the majority ultimately returns to an Idaho case that it characterizes as "very nearly on point to the instant matter." Majority Decision ¶ 18; *Kiger v. Idaho Corporation*, 85 Idaho 424, 380 P.2d 208 (1963). In

comparing the facts of *Kiger* with the facts of this case, the majority grapples with "whether there is a distinction [between Kiger's non-compensable subsequent accident and Claimant's subsequent accident] that will bear close scrutiny." Majority Decision ¶ 34. The majority finds in the negative. My colleagues note that the *Kiger* Court "quoted extensively from the *Ericksen* rule." Majority Decision ¶ 23. The citation by the *Kiger* Court to the *Ericksen* decision is as follows:

> It is sufficient to say that an injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It arises 'out of' the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot be fairly traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment.

Kiger, 85 Idaho at 430, 380 P.2d at 210-211. It is puzzling, at best, to understand how the majority could rely on a 51-year-old case that quotes extensively from a portion of another case that the majority admits "has been implicitly, if not explicitly, overruled" recently by *Spivey* in 2002. Majority Decision ¶ 14.

Even assuming, *arguendo*, that the findings in *Kiger* are still good law, there is an obvious distinction between a required IME and an appointment for treatment of a compensable injury. Kiger was injured while traveling to a routine medical appointment made necessary as a result of her work-related injury. Claimant was injured while traveling home from an employer-compelled IME. An IME is not *medical care* provided as a result of a work-related injury; an IME is an exam conducted for Employer/Surety's benefit to assess a claimant's condition. As previously stated, a claimant must submit to an employers request for an IME or

risk having her workers' compensation benefits terminated. Idaho Code § 72-433 requires that the claimant be reimbursed for any expenses, including loss of wages, incurred as a result of submitting to the IME. It defies logic, then, to find that a compulsory directive given by an Employer/Surety for which the employee receives reimbursement for expenses, including wages, is outside the course and scope of the employee's scope of employment. Idaho case law is clear that "[c]ompensation is allowable when the injury arises out of the nature of the employment, conditions, *obligations*, or *incidents* of the employment." *Smith v. University of Idaho*, 67 Idaho 22, 28, 170 P.2d 404, 408 (1946) (emphasis added).

The majority characterizes Claimant's MVA as a "remote consequence of the original work injury." Majority Decision ¶ 17. Attending an IME may not have been within Claimant's original job description when she was hired by Employer, but Claimant's directive to attend upon threat of losing her benefits certainly creates a sufficient nexus to find a requisite causal connection between Claimant's original compensable injury and her subsequent MVA. Whether it is the employer's directive or the employment itself that causes a claimant's injury, the injury necessarily arises out of and in the course of employment.

Claimant, in the discharge of a duty owed to her Employer/Surety, attended a mandatory IME – not a medical appointment for treatment of her injuries. Pursuant to Idaho Code, she was entitled to financial reimbursement for travel expenses incurred by attending the exam. The stipulated facts reflect that Claimant did not stop or make any detours while attending the scheduled IME. Further, Claimant's actions did not cause nor contribute to the collision that caused her later injuries. There is no other reasonable conclusion but that Claimant's injuries were directly and proximately caused by the circumstances that arose out of and in the course of her employment.

For the foregoing reasons, I submit this dissent.

Dated this ___26th_____ day of _September___, 2014.

INDUSTRIAL COMMISSION

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

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___26th____ day of _September_____, 2014, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND DISSENTING OPINION** was served by regular United States Mail upon each of the following:

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ka _/s/_____