

SOUTH DAKOTA DEPARTMENT OF LABOR  
DIVISION OF LABOR AND MANAGEMENT

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JAMES NORRIS, JR.,

Claimant,

vs.

GLEN BARBER AND ASSOCIATES,

Employer,

and

CONTINENTAL INSURANCE COMPANY,

Insurer.

PETITION FOR  
DECLARATORY RULING

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This matter comes before the Department on a petition for declaratory ruling pursuant to ARSD 47:01:01:04. For the purpose of the ruling, the following facts are assumed, it being understood that a final decision on said facts would await a contested case hearing on the merits:

1. Claimant is a Native American who resides on the Cheyenne River Sioux Reservation in Eagle Butte, South Dakota;
2. Glen Barber and Associates is a non-tribal employer based in Rapid City, South Dakota, who contracted to build several homes on the Cheyenne River Sioux Reservation.
3. Claimant alleges that he sustained a work-related injury while employed by Glen Barber and while working on a job site within the boundaries of the reservation.

Petitioners, Glen Barber and Associates and Continental Insurance Company, ask the Department to rule whether the Department would have exclusive jurisdiction over Claimant's claims for workers' compensation benefits, in light of SDCL 62-2-5, 62-3-1, 62-3-2, and 40 U.S.C. § 290. Based on the discussion that follows, the Department hereby rules that it would have exclusive jurisdiction over Claimant's claims.

40 U.S.C. 290 provides:

Whatsoever constituted authority of each of the several States is charged with the enforcement of and requiring compliances with the State workmen's compensation laws of said States and with the enforcement of and requiring compliance with the orders, decisions, and awards of said constituted authority of said States shall have the power and authority to apply such laws to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of any State, and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which is within the exterior boundaries of any State, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the State within whose boundaries such place may be.

For the purposes set out in this section, the United States of America vests in the several States within whose exterior boundaries such place may be, insofar as the enforcement of State workmen's compensation laws are affected, the right, power, and authority aforesaid: Provided, however, that by passage of this section of the United States of America in nowise relinquishes its jurisdiction for any purpose over the property named, with the exception of extending to the several States within whose exterior boundaries such place may be only the powers above enumerated relating to the enforcement of their State worker's compensation laws as herein designated: Provided further, that nothing in this

section shall be construed to modify or amend subchapter I of chapter 81 of Title 5.

There is no dispute that, if the State of South Dakota does have jurisdiction over this claim, 62-2-5, 62-3-1 and 62-3-2 act to limit this Claimant's remedies against her employer to those allowed by South Dakota's workers' compensation system. Precedent from the federal courts would appear to confirm that South Dakota may exercise its jurisdiction here.

In Begay v. Kerr-McGee Corp., 682 F.2d 1311 (9th Cir. 1982), Native Americans injured while working for a non-Native American employer on the reservation brought a lawsuit directly against the employer in Federal District Court. The action was dismissed, and the dismissal was affirmed by the Ninth Circuit, which said:

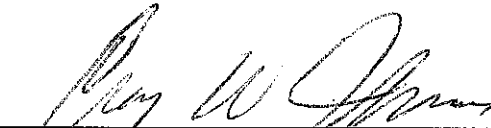
The language of 40 U.S.C. 290 unambiguously permits application of state workers' compensation laws to all United States territory within the state. Claims by Indians against non-Indian employers are not matters of "self-governance in purely intramural matters" sufficient to avoid the rule that Indians are subject to federal laws of general application, and the exercise of state jurisdiction over such claims does not, even minimally, infringe upon or frustrate tribal self-government.

Id. at 1319. The fact situation is identical to the one presented for declaratory ruling. The Department hereby concludes that it does have jurisdiction over Claimant's claims. It saves for another day, however, the question of whether such jurisdiction may be extended to a Native American

who is injured while working for a Native American business on the reservation.

Dated this 3<sup>rd</sup> day of July, 1996.

SOUTH DAKOTA DEPARTMENT OF LABOR

A handwritten signature in dark ink, appearing to read "Craig W. Johnson", is written over a horizontal line.

Craig W. Johnson, Secretary  
Division of Labor and Management