

NOV 15 1999

*Willa Red Cloud*  
Clerk of Court/Assistant

IN THE  
HO-CHUNK NATION SUPREME COURT

Michelle M. Ferguson ,  
Plaintiff/Appellant,

DECISION

v.

Case No.: SU 99-10

Ho-Chunk Nation Insurance Review Commission/  
Division of Risk Management,  
Defendant/Appellee.

The Ho-Chunk Nation Supreme Court reviewed the Appellant's *Notice of Appeal*, supporting briefs and transcripts in this matter via telephonic conference call on October 28, 1999. On appeal, the question was raised as to whether or not the Ho-Chunk Nation Personnel Policies and Procedure Manual, adopted resolution 6-9-98A, granted a waiver of sovereign immunity in the area of Worker's Compensation. It is the decision of this Court to affirm the August 12, 1999 Judgment as to the constitutionality of the HIRC Ordinance and remand to the lower court for further proceeding on the newly raised issue appealed to this court.

The August 12, 1999 Judgment addressed the constitutionality of the HIRC Ordinance. The Ho-Chunk Nation (hereinafter HCN) Supreme Court affirms the Trial Court's finding. The Trial Court's Judgment does not address the Worker's Compensation benefit outlined in the HCN Personnel Policies and Procedure Manual (hereinafter PPM).

Appellant contends in their brief, filed September 23, 1999, that the HCN waived its sovereign immunity in worker's compensation claims by its adoption of the HCN

Personnel Policies and Procedures Manual Resolution 6-9-98A. The August 12, 1999 Judgment did not address the issue of whether the PPM was applicable. The Worker's Compensation benefit was not addressed and therefore not subject to the HCN Supreme Court review, at this point.

The Trial Court has the authority to make findings of fact. The HCN Supreme Court has the power to interpret the Constitution and laws of the HCN and to make conclusions of law. The HCN Supreme Court cannot conduct the fact finding but may decide on the questions of law. In this case, the issue of whether the PPM governs after a HCN law is declared unconstitutional is one that should be addressed, first, by the trial court. The HCN Supreme Court remands to the Trial Court to address the personnel grievance complaint filed by the Appellant on March 22, 1999 and whether the Worker's Compensation clause in the PPM is applicable. If it is applicable, does it grant a waiver of sovereign immunity?

**IT IS SO ORDERED. PER CURIAM.**

Dated this 15<sup>th</sup> day of November 1999.

  
Debra C. Greengrass  
Associate Justice, HCN Supreme Court

## CERTIFICATE OF SERVICE

I, Willa RedCloud, Clerk of the Ho-Chunk Nation Supreme Court of the Ho-Chunk Nation, do hereby certify that on the date set forth below I served a true and correct copy of the attached paper filed in Case No. SU-99-10 (CV-99-20), by the United States Postal Service, upon all persons listed below:

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Willa RedCloud, Clerk of Court  
Ho-Chunk Nation Supreme Court