

# The "Zone of Special Danger" in Defense Base Act Cases

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The "Zone of Special Danger" doctrine applies in work injury cases arising under the Defense Base Act (DBA, found at 42 U.S.C. 1651 et seq.) The DBA is an extension of the Longshore and Harbor Workers' Compensation Act (LHWCA, found at 33 U.S.C. 901 et seq.), which provides workers' compensation benefits for maritime-related work injuries. The DBA applies longshore workers' comp law to civilian workers who are injured while working under contracts on U.S. military bases abroad, on public works projects conducted by the U.S. abroad, and in certain other circumstances. For instance, the civilian contractors working for companies like Halliburton, KBR, DynCorp, and Fluor, who provide logistical support to U.S. bases in Iraq, Afghanistan, and elsewhere around the world, are covered by the DBA.

The Longshore Act and Defense Base Act are like most workers' compensation laws--they compensate injured workers for lost earning capacity and medical treatment caused by a work injury. Sometimes there is a question whether injuries suffered by civilians working under contract should be covered under these acts. That's where the "Zone of Special Danger" doctrine comes in.

Under regular workers' compensation law, worker's comp benefits aren't available to an employee whose injury occurred outside the scope of employment. Outside the scope of employment means that the employee wasn't actually engaged in work activity at the time of the injury (for instance, was involved in a recreational activity), or was involved in horseplay or doing something against company policy. Under the Zone of Special Danger doctrine, this isn't the case. In jobs where the work is done in a zone of special danger, almost all injuries are considered work-related. When civilians work under contract in remote places, recreational activities are considered to be part of the job.

A zone of special danger applies when the circumstances of the work increase the risk of physical injury to the employee. In DBA cases, especially those arising in war zones, the Zone of Special Danger is so expansive that it can be difficult to imagine an injury that would not be work-related.

For example, in the case of *N.R. v. Halliburton & Insurance Company of the State of Pennsylvania*, BRB No. 07-810 (2008), the Benefits Review Board (BRB) of the U.S. Department of Labor reviewed a decision of an administrative law judge finding that a worker was not eligible for benefits because his injury was so far removed from the risks inherent in his work that the "Zone of Special Danger" no longer applied. The ALJ found the worker was ineligible for benefits because he had been injured while resisting the orders of on-base Military Police that he travel by military convoy to the point of his departure from Afghanistan. The worker did not want to travel by military convoy because he believed it to be unsafe. The worker was injured while resisting arrest and brought a claim for DBA benefits after he returned home to the U.S. The claim was denied by the ALJ, who found that the worker's refusal to abide by the safety procedures established by the MP meant that the worker's actions happened outside the scope of employment. The BRB reversed the ALJ's decision, finding that the ALJ had considered the worker's fault in arriving at the decision to deny benefits. The BRB cited the Longshore Act's language that "compensation shall be payable irrespective of fault as a cause for injury," 33 U.S.C. 904(b).

Other examples of injuries that were found to be incurred within the zone of special danger, and were therefore covered, include the following:

A worker drowned while attempting to help two other people who were swimming in a dangerous channel near the employer's recreational facility. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951).

A worker died from an accidental, self-inflicted overdose of pain medication that he took in conjunction with getting a tattoo at a tattoo parlor near the base. *Urso v. MVM Inc.*, BRB Nos 09-0831, 0831A, & 0831B.

A worker sustained a broken left hip while engaged in horseplay at a bar after work hours. *Ilaszczat v. Kalama Services & Cigna Insurance*, BRB No. 01-0774 (2002).

As you can see, The "Zone of Special Danger" in DBA cases is broad. The reason behind the "Zone of Special Danger" doctrine is simple: Overseas work is often performed in harsh, hazardous conditions where there is no escape from the dangers of the environment in which the work is done. Because the entire area where the employee finds him or herself presents unusual risk of harm, activities that might not be covered under state workers' compensation laws are covered under the Defense Base Act through the "Zone of Special Danger."