

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-161

PHARMERICA

APPELLANT

V.

AURORA CORTEZ

APPELLANT

Opinion Delivered AUGUST 27, 2008

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F508008]

REVERSED AND REMANDED

KAREN R. BAKER, Judge

The Arkansas Worker's Compensation Commission found that Aurora Cortez—who was an employee of appellant Pharmerica—sustained an occupational disease resulting in disability arising out of and in the course of her employment with Pharmerica, where she was exposed to carbon monoxide from a faulty water heater at work. Pharmerica appeals from that decision. We return this case to the Commission for additional findings of fact, in keeping with our decision in *Pharmerica v. Seratt*, ___ Ark. App. ___, ___ S.W.3d ___ (June 24, 2008).

In its opinion, the Commission found that Ms. Cortez sustained a compensable occupational disease from her gradual exposure to carbon monoxide at work and that the exposure to carbon monoxide was causally connected to objective medical findings. On appeal, appellant argues (1) that it was an error of law for the Commission to conclude that Ms. Cortez suffered an occupational disease when Ms. Cortez did not argue to either the Commission or the administrative law judge that she sustained an occupational disease; (2)

that Ms. Cortez's occupational disease claim was barred by her failure to give Pharmerica the statutorily required notice of the claim; (3) that Ms. Cortez failed to prove she sustained an occupational disease, as there was no objective evidence of a disease caused by carbon monoxide exposure and further, no evidence that Ms. Cortez's condition was distinctively associated and causally connected to her occupation.

This court has previously had before it *Seratt*, in which Pharmerica also challenged the Commission's finding that an employee—who was a co-employee of Ms. Cortez and worked in the same facility as Ms. Cortez—sustained a compensable occupational disease arising out of exposure to carbon monoxide from the same faulty water heater. In addressing Pharmerica's arguments on appeal, the *Seratt* court held that, despite Pharmerica's argument that it was not allowed to defend itself against the Commission's finding that the employee sustained a compensable occupational disease, the Commission was nevertheless within its power to render findings on whether the employee suffered a compensable occupational disease. Pharmerica also argued that because the employee did not give the statutorily required notice of an occupational disease, the employee was not entitled to make a claim of occupational disease. *See* Ark. Code Ann. § 11-9-603(a)(2)(A) (Repl. 2002). As discussed in its opinion, the *Seratt* court remanded the case to the Commission to make findings of fact on the issue. The court also held that, if the Commission found no statutory bar to the claim, the Commission should also make additional findings of fact regarding its conclusion that the employee sustained an occupational disease. While the *Seratt* court noted that the Commission did make findings of fact on the existence of objective findings to support a compensable

injury, as well as on the causal relationship between the injury and the work, the Commission should also make additional findings regarding how the claim fell within the statutory construct of an occupational disease, particularly whether the disease was “due to the nature of the employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade[.]” *See* Ark. Code Ann. § 11-9-601(g)(1) (Repl. 2002).

The issues raised in *Seratt* are also raised here, and the *Seratt* analysis applies here. While the Commission properly considered whether appellee sustained a compensable occupational disease, the Commission did not consider whether the claim was barred for failure to give the statutory notice or make findings necessary to explain the basis of its conclusion on compensability. Accordingly, as in *Seratt*, we reverse and remand for the Commission to make additional findings of fact on whether the claim is barred and, if disposition of this issue so requires, make findings necessary to explain the basis of its conclusion on compensability.

Reversed and remanded.

HART and HEFFLEY, JJ., agree.