

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-1007

CARMELITA FLORES

APPELLANT

V.

WALMART DISTRIBUTION and
CLAIMS MANAGEMENT, INC.

APPELLEES

Opinion Delivered March 7, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION,
[NO. F505040]

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant Carmelita Flores appeals from the Arkansas Workers' Compensation Commission's (Commission) decision affirming and adopting the findings of the Administrative Law Judge (ALJ) and denying her claim for permanent-disability benefits because the statute of limitations had run. On appeal, Flores argues that the Commission erred in determining that her permanent-disability claims were barred by the statute of limitations because she remains entitled to additional medical treatment. We disagree and affirm.

Flores, who was thirty-nine years old at the time of her injury, was employed by appellee Walmart Distribution as a forklift driver on April 30, 2005, when she slipped on onion juice and fell, injuring her low back and fracturing her coccyx. Her injuries were accepted as compensable by Walmart, and she received medical treatment and temporary total disability (TTD) benefits. On June 29, 2005, Flores filed a Form AR-C, requesting additional treatment, additional TTD benefits, and a controverted attorney's fee. A hearing was



conducted on these issues, and an opinion was filed on September 6, 2006, finding that Flores was entitled to a TENS unit prescribed by her physician and TTD benefits from June 17, 2005, through June 30, 2005. Neither party appealed from this opinion, and both parties agree that it was a final decision. Flores was also assessed with a two-percent impairment rating for her coccyx injury when her physician determined that she had reached maximum medical improvement in September 2005. Although Flores initially returned to work for Walmart subsequent to her injury, she eventually left that employment, claiming that she was physically unable to perform her job duties. She then worked for several different employers until October 2009, when she stopped working completely due to her continued complaints from her 2005 injury.

In a letter to the Commission dated April 8, 2009, Flores requested a hearing on her entitlement to medication and additional medical treatment from Dr. Clifford Evans. A pre-hearing conference was conducted, and a hearing was scheduled for June 29, 2009. Prior to that hearing, on June 24, 2009, the Commission informed the parties that the hearing had been canceled at their request and that the file was being returned to its general files until further action was requested. On October 7, 2009, Flores sent another letter to the Commission, stating that the previously scheduled hearing had been canceled based upon her understanding that Walmart was going to pay for Dr. Evans's treatment. She indicated that this treatment had not been paid for and again requested that a hearing be set on her claim. Subsequently, in a letter dated October 11, 2010, Flores submitted a pre-hearing questionnaire, indicating that the issues to be litigated were the extent of permanent



impairment, wage-loss disability, and a controverted attorney's fee.

At the January 24, 2011 hearing before the ALJ, appellees argued that Flores's claims for permanent-disability benefits were barred by the applicable statute of limitations. The parties stipulated that the last authorized medical treatment was on July 6, 2009. Flores indicated at the hearing that she was claiming entitlement to additional medical treatment after this date, in addition to her permanent-disability claims. Following the hearing, the ALJ issued an opinion finding that Flores's claims for benefits attributable to permanent impairment, wage-loss disability, and an attorney's fee, which were first raised in her letter of October 11, 2010, were barred by the statute of limitations because they were not brought within two years of the date of her work injury or within one year of the date of the last payment of compensation on July 6, 2009. However, the ALJ found that Flores's claim for additional medical treatment, which was originally requested on April 8, 2009, although not litigated, and again requested on October 7, 2009, was timely and that she had proved her entitlement to these additional medical benefits.

In an opinion filed on July 5, 2011, the Commission agreed with the ALJ's determination and affirmed and adopted the ALJ's findings. Flores now appeals from the Commission's decision.

When reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission. *Evans v. Beamis Co., Inc.*, 2010 Ark. App. 65, 374 S.W.3d 51. This court must affirm the decision of the Commission if it is supported by substantial



evidence. *Id.* Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion of the Commission. *Id.* We reverse the Commission's decision only if we are convinced that fair-minded persons could not have reached the same conclusion with the same facts before them. *Id.* Questions regarding the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Id.* When the Commission, as it did in this case, affirms and adopts the ALJ's findings, this court considers both the ALJ's and the Commission's opinions. *Montgomery v. J & J Lumber Co.*, 2011 Ark. App. 129.

On appeal, Flores argues that the Commission's determination that her claim for permanent-disability benefits was barred by the statute of limitations is erroneous as a matter of law when the Commission also found that she remains entitled to additional medical benefits. According to Ark. Code Ann. § 11-9-702(b)(1) (Supp. 2011), which sets out the statute of limitations for workers' compensation benefits, "[i]n cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater." For purposes of section 11-9-702(b), we have held that the provision of medical services constitutes payment of compensation. *Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 890 S.W.2d 253 (1994); *Barnes v. Fort Smith Pub. Sch.*, 95 Ark. App. 248, 235 S.W.3d 905 (2006).

Essentially, Flores asserts that her permanent-disability claims cannot be barred by the



statute of limitations as long as her medical-treatment claim remains open, because there has not yet been a “last payment of compensation” within the meaning of section 11-9-702(b)(1). Flores recognizes the ALJ’s and Commission’s reliance on *Stewart v. Arkansas Glass Container*, 2010 Ark. 198, 366 S.W.3d 358, but contends that this reliance is misplaced because the facts in that case are distinguishable.

In *Stewart*, the claimant sustained an admittedly compensable injury on August 8, 2001, and he last received medical treatment for the injury on June 19, 2003. In October 2003, Stewart filed a claim for additional medical treatment, to which the ALJ found that he was entitled. This decision was reversed, however, by the Commission, and this court affirmed the Commission’s opinion, with the mandate being issued on December 7, 2005. Shortly thereafter, Stewart made a request for additional benefits, including TTD benefits, medical treatment, permanent impairment, and wage-loss disability, claiming that he had undergone surgery following the ALJ’s opinion, prior to the Commission’s reversal, and that the new evidence from this surgery demonstrated his entitlement to the additional compensation. The employer argued that Stewart’s claims were barred by the statute of limitations, and the Commission agreed. Stewart appealed, and although our court reversed the Commission’s decision in *Stewart v. Arkansas Glass Container*, 2009 Ark. App. 300, 307 S.W.3d 614, the supreme court then reversed this court, holding that Stewart’s claims for additional benefits were barred by the statute of limitations in section 11-9-702(b)(1). Citing *Barnes, supra*, and *Eskola v. Little Rock School District*, 93 Ark. App. 250, 218 S.W.3d 372 (2005), the supreme court noted that a claimant’s timely request for additional compensation that is never acted



upon tolls the statute of limitations with regard to that claim. The court found, however, that Stewart's claim had in fact been acted upon when his request for medical benefits was heard and ultimately denied. Moreover, the supreme court held that a request for additional compensation that is not acted upon only tolls the statute of limitations with respect to that particular claim, and therefore, Stewart's earlier requests for medical benefits could not have tolled the statute of limitations for all other claims for benefits that were not requested at that time. Thus, his December 2005 claim for additional benefits, such as TTD benefits and attorney's fees, was untimely. *Stewart*, 2010 Ark. 198, at 11, 366 S.W.3d at 364.

Flores attempts to distinguish *Stewart* based on the fact that her claim for additional medical benefits was found to be compensable by the Commission and that she has an open and ongoing claim for compensation. She contends that the Commission's determination that an injured worker's right to disability benefits can be barred by the statute of limitations while her claim is still open with regard to her entitlement to medical benefits is a misinterpretation of *Stewart*, a misapplication of Ark. Code Ann. § 11-9-702, a failure to strictly construe the workers' compensation statutes, and is inconsistent with the legislative intent set forth in Ark. Code Ann. § 11-9-1001 (Repl. 2002) to pay appropriate disability benefits to all legitimately injured workers.

Contrary to Flores's argument, the supreme court in *Stewart* did strictly construe section 11-9-702(b)(1), and we are bound by its holding and interpretation of the statute. *Rice v. Ragsdale*, 104 Ark. App. 364, 292 S.W.3d 856 (2009). The court in *Stewart* did not base its decision solely on the fact that the claimant was unsuccessful in his claim for additional



medical benefits and that there were no claims left pending, but also held that his claim for medical benefits would have tolled the statute of limitations only with regard to that specific claim and not as to other claims for benefits not requested at that time.

Here, as in *Stewart*, although Flores filed a timely request for additional medical treatment, she failed to request permanent-disability benefits until October 11, 2010, more than one year after the last payment of compensation by Walmart, which the parties stipulated was on July 6, 2009. It is the claimant's burden to prove that she acted within the time allowed for filing a claim for additional compensation. *Stewart, supra*. Thus, under the plain language of section 11-9-702(c)(1), Flores's claims for additional benefits in the form of permanent-disability compensation were barred by the statute of limitations. We will not search for legislative intent where the plain meaning of the statute is clear. *Curt Bean Transp., Inc. v. Hill*, 2009 Ark. App. 760, 348 S.W.3d 56. The Commission's decision is supported by substantial evidence, and we therefore affirm.

Affirmed.

HART and BROWN, JJ., agree.

Walker, Shock & Shock PLLC, by: *Eddie H. Walker, Jr.*, for appellant.

Bassett Law Firm LLP, by: *Curtis L. Nebben*, for appellee.