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SUPREME COURT OF ARKANSAS

No. CV-20-699

TERRY WYNNE

APPELLANT

V.

LIBERTY TRAILER AND DEATH
AND PERMANENT TOTAL
DISABILITY TRUST FUND

APPELLEES

Opinion Delivered: March 31, 2022

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. G508657]

REVERSED AND REMANDED;
COURT OF APPEALS' OPINION
VACATED.

JOHN DAN KEMP, Chief Justice

Appellant Terry Wynne appeals the Arkansas Workers' Compensation Commission's denial of his claim for additional medical benefits. For reversal, Wynne argues that because he requested the additional benefits within one year of the last payment of compensation, his claim was timely pursuant to Arkansas Code Annotated section 11-9-702(b)(1) (Repl. 2012). We reverse and remand.

I. *Facts*

On November 11, 2015, Wynne fell from a ladder while working as a trailer technician and certified welder for Liberty Trailer. He sustained a compensable right-shoulder injury. As a result of the fall, he underwent two shoulder surgeries—one on February 2, 2016, and a second one on February 17, 2017. He reported no improvement following the second surgery. Wynne continued with physical therapy and began treatment with Dr. Charles Pearce. He underwent a functional capacity evaluation on October 27,

2017. On October 30, Dr. Pearce determined that Wynne had reached maximum medical improvement and released him to light-duty work with permanent restrictions. Wynne's last receipt of payment for medical benefits was on December 5, 2017, for services provided by Dr. Pearce on October 30. However, he continued to receive disability benefits. The last payment of disability benefits to Wynne was for the period of November 11 through December 14, 2018, by check issued January 17, 2019.

On February 25, 2019, Wynne filed a Form AR-C with the Commission requesting additional temporary total disability, additional temporary partial disability, additional permanent partial disability, additional medical expenses, rehabilitation, and attorney's fees.¹ A hearing was held before the administrative law judge (ALJ) on January 8, 2020. The ALJ subsequently issued an opinion denying Wynne's claim for additional medical treatment and finding that the claim was barred by the statute of limitations. The Commission affirmed and adopted the ALJ's opinion.

Wynne appealed the Commission's decision, and the court of appeals reversed the denial of additional medical benefits. *Wynne v. Liberty Trailer*, 2021 Ark. App. 374, at 10, 636 S.W.3d 348, 354. It held that Wynne's claim for additional medical treatment was filed within one year of the date of the last payment of compensation and, therefore, was not barred by the statute of limitations. *Id.* at 9–10, 636 S.W.3d at 354. Liberty Trailer filed a petition for review with this court, which we granted. When we grant a petition for review,

¹Wynne also checked a box on the form seeking "Other" relief, but he did not explain what other relief he sought.

we consider the appeal as though it had originally been filed in this court. *Davis Nursing Ass'n v. Neal*, 2019 Ark. 91, at 4, 570 S.W.3d 457, 460.

II. *Statute of Limitations*

In his sole point on appeal, Wynne argues that the Commission erred in determining that his claim for additional medical benefits was barred by the statute of limitations. Wynne argues that his claim was timely because he filed it within one year from the last payment of compensation.² He asserts that under section 11-9-702(b)(1), when more than two years has passed since the date of the injury, a claim for additional compensation, i.e., disability *or* medical benefits, must be made within one year of the date of the last payment of compensation, i.e., disability *or* medical benefits. Liberty Trailer argues that Wynne's claim for additional medical benefits is time-barred because he did not file his claim within one year of his last payment for medical benefits.

When the Commission adopts the ALJ's opinion, it makes the ALJ's findings and conclusions its findings and conclusions. *White Cty. Judge v. Menser*, 2020 Ark. 140, at 6, 597 S.W.3d 640, 644. We consider both the ALJ's opinion and the Commission's majority opinion. *Id.*, 597 S.W.3d at 644. We view the evidence in the light most favorable to the Commission's decision and affirm that decision if it is supported by substantial evidence. *Brookshire Grocery Co. v. Morgan*, 2018 Ark. 62, at 5, 539 S.W.3d 574, 578.

The present appeal involves the interpretation and application of a statute. The correct interpretation and application of an Arkansas statute is a question of law, which we

²Wynne makes no assertion that he filed his claim for additional benefits within two years of the date of his injury.

decide de novo. *White Cty. Judge*, 2020 Ark. 140, at 7, 597 S.W.3d at 644. This court decides what a statute means. *Id.*, 597 S.W.3d at 644. When we construe the workers'-compensation statutes, we must strictly construe them. *Id.*, 597 S.W.3d at 644; Ark. Code Ann. § 11-9-704(c)(3) (Repl. 2012). Strict construction is narrow construction and requires that nothing be taken as intended that is not clearly expressed. *Myers v. Yamato Kogyo Co., Ltd.*, 2020 Ark. 135, at 6, 597 S.W.3d 613, 617. The doctrine of strict construction requires this court to use the plain meaning of the language employed. *Id.*, 597 S.W.3d at 617.

The statute of limitations applicable to Wynne's request for additional workers'-compensation benefits is set forth in Arkansas Code Annotated section 11-9-702(b)(1):

(b) TIME FOR FILING ADDITIONAL COMPENSATION.

- (1) In 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.

This court has stated that a claimant must prove that he or she acted within the time allowed for filing a claim for additional compensation. *White Cty. Judge*, 2020 Ark. 140, at 8, 597 S.W.3d at 645.

Here, section 11-9-702(b)(1) provides that if "any compensation" is paid, then a claim for additional compensation must be made "within one (1) year from the date of the last payment of compensation." We agree with Wynne that, under a plain reading of section 11-9-702(b)(1), the statute of limitations on a request for additional benefits commences when the last payment, whether for disability or medical benefits, is made. The last payment

of benefits to Wynne was a check for disability benefits issued on January 17, 2019. Thus, his February 25, 2019 claim for additional medical benefits was timely.

We are unpersuaded by Liberty Trailer's argument that *Stewart v. Arkansas Glass Container*, 2010 Ark. 198, 366 S.W.3d 358, and *Flores v. Walmart Distribution*, 2012 Ark. App. 201, compel a different result. *Stewart* and *Flores* involved the tolling of the statute of limitations. Tolling temporarily delays or suspends the statute of limitations; it does not reset it. Section 9-11-702(b)(1) does not explicitly discuss tolling. However, in *Stewart*, we addressed tolling and held that when a request for additional compensation is not acted upon, the statute of limitations is tolled, but only for the particular type of compensation requested. *Stewart*, 2010 Ark. 198, at 11, 366 S.W.3d at 464. Stewart's timely request for additional medical benefits did not toll the statute of limitations for all other claims of benefits that were not timely requested. *Id.*, 366 S.W.3d at 464; *see also Flores*, 2012 Ark. App. 201, at 5-7 (applying tolling principles from *Stewart* and holding that a claim for additional medical benefits did not toll the statute of limitations on claim for additional disability benefits).

The court of appeals extended our tolling caselaw to a non-tolling case in *Kirk v. Cent. States Mfg. Inc.*, 2018 Ark. App. 78, 540 S.W.3d 714. There, Kirk was injured in July 2006 and received medical compensation through August 14, 2014, although he had ceased receiving disability benefits almost seven years earlier. *Id.* at 2, 6, 540 S.W.3d at 715, 717. Kirk filed a claim requesting additional disability benefits on August 18, 2014, and the court of appeals concluded that his claim for additional compensation was barred by the statute of limitations. *Id.* at 8, 540 S.W.3d at 718. It reached this conclusion even though Kirk's

August 2014 request for additional disability benefits was within one year of the last payment of medical benefits. *Id.* at 5, 540 S.W.3d at 717. *Kirk* was not a tolling case; it involved the commencement of the statute of limitations for additional benefits. Thus, its holding conflicts with the plain language of section 11-9-702(b)(1). To the extent that *Kirk* holds that the statute of limitations on a claim for additional benefits commences upon last payment of the specific type of benefit claimant sought, rather than from the date of the last payment of compensation, we overrule it.

The present case also concerns the commencement of the statute of limitations—not tolling. Again, Wynne’s last receipt of payment for disability benefits was from November 11 through December 14, 2018, by check issued January 17, 2019. Thus, he filed his February 25, 2019 claim for additional medical benefits within one year of the last payment of compensation relating to his November 2015 right-shoulder injury. We hold that under a plain reading of section 11-9-702(b)(1), Wynne’s claim for additional medical benefits was timely. Accordingly, we reverse the Commission’s decision and remand for further proceedings.

Reversed and remanded; court of appeals’ opinion vacated.

Special Justice MEGAN HARGRAVES joins in this opinion.

WOOD, J., dissents.

WEBB, J., not participating.

RHONDA K. WOOD, Justice, dissenting. Because the majority’s interpretation of the statute upends our stable precedent and contradicts the statute’s purpose of limiting the time for filing additional benefits, I dissent. This case requires us to interpret whether “of

compensation” in Ark. Code Ann. § 11-9-702(b)(1) means of *any* compensation or of *such* compensation. This statute states,

In 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*

(Emphasis added.) Here, the statute is ambiguous. While the statute takes effect when “any compensation” has been paid, it also sets out time limitations on additional claims for compensation. The former “compensation” is not necessarily synonymous with the latter. The text doesn’t tell us whether the one-year limitations period begins to run from the last date of any compensation or from the last date of the same type of compensation; it just says “of compensation” without any further delineation.

When statutory language is ambiguous, this court considers the statute’s subject matter, object to be accomplished, purpose to be served, and remedy provided.¹ The purpose of this limitations period in workers’ compensation cases is to give claimants a one-year period to decide whether they have been “fully compensated for their injury, and not for the purpose of paying belated medical bills” indefinitely.² However, the majority’s interpretation will lead to absurd results that contradict this purpose. Now, an employee who initially received short-term medical benefits but received ongoing disability payments could, years or even decades later, piggy-back additional medical treatment to the ongoing disability

¹*Walther v. FLIS Enter., Inc.*, 2018 Ark. 64, 540 S.W.3d 264.

²*Superior Fed’l Savings & Loan Ass’n v. Shelby*, 265 Ark. 599, 601, 580 S.W.3d 201, 203 (1979) (citing *Phillips v. Bray*, 234 Ark. 190, 351 S.W.2d 147 (1961)); *see also Plante v. Tyson Foods, Inc.*, 319 Ark. 126, 129, 890 S.W.2d 253, 255 (1994).

payments, causing new medical claims to continue in perpetuity. This is contrary to a statutory scheme that provides specific statute-of-limitations periods.³

Our precedent also supports my interpretation that “of compensation” does not mean “of *any* compensation.”⁴ Since 2010, Arkansas courts, the Arkansas Workers’ Compensation Commission, and the legislature have been operating under this interpretation.⁵ This was precisely the reasoning of the Chief Administrative Law Judge, which was adopted by the Commission. The ALJ relied on our two decades of caselaw and observed that the legislature had not amended the statute to overturn *Stewart* and its progeny.

Our interpretation has been relied on by many for twenty-two years, and in Workers’ Compensation matters, consistency matters. The majority attempts to distinguish *Stewart* as a tolling case, but a closer analysis belies its interpretation. In *Stewart*, the injured employee timely filed a claim for additional medical benefits. While his claim was pending, he requested additional benefits, including temporary disability and wage-loss benefits. His request for additional medical benefits was denied, and we held that his second request for disability benefits was untimely because, “a request for additional compensation that is not acted on

³See Ark. Code Ann. § 11-8-107 (limiting causes of action to three years); Ark. Code Ann. § 11-9-603(b) (setting limitations periods for occupational diseases); Ark. Code Ann. § 11-9-702(a)(1) (setting a two-year limitations period for filing disability claims with the commission); and Ark. Code Ann. § 11-9-713(a)(2) (limiting time for modification of award to six months from the termination of the compensation period).

⁴See *Stewart v. Ark. Glass Container*, 2010 Ark. 198, 366 S.W.3d 358; *Flores v. Walmart Distrib.*, 2012 Ark. App. 201; *Kirk v. Cent. States Mfg.*, 2018 Ark. App. 78, 540 S.W.3d 714.

⁵*Id.*

only tolls the statute of limitations with respect to that particular claim.”⁶ In other words, *Stewart* said that timely filing for one type of benefit does not toll the statute of limitations for other benefits while the first claim is pending. Filing for additional benefits was limited to the particular type of claim.

But *Stewart* wasn’t only about tolling. And a simple example shows the flaws of the majority’s interpretation of *Stewart*. According to the majority, a timely claim for one type of benefit doesn’t toll the limitations period for other benefits *if and only if* the first claim is ultimately denied. But, if the first claim is granted, then an employee can claim other benefits outside the one-year period. So, if *Stewart*’s request for additional medical benefits had been granted, and not denied, his claim for additional indemnity would have been revived as soon as he received compensation for additional medical benefits. Clear as mud, right?

I think the majority’s interpretation is out of line with legislative intent and our precedent. Our court should be consistent in its interpretation. If there is a desire to change policy, then I would leave that to the General Assembly. I respectfully dissent.

M. Keith Wren, for appellant.

Worley, Wood & Parrish, P.A., by: *Jarrold S. Parrish*, for appellee.

⁶*Stewart*, 2010 Ark. 198, at 11, 366 S.W.3d at 364.