

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F505040

CARMELITA FLORES, EMPLOYEE	CLAIMANT
WAL-MART DISTRIBUTION, EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., CARRIER/TPA	RESPONDENT

OPINION FILED JULY 5, 2011

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE CURTIS L. NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed March 2, 2011.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 18, 2010, and contained in a pre-hearing order filed November 19, 2010, are hereby accepted as fact.
2. The parties' stipulation that with regard to the statute of limitations the last authorized medical treatment was July 6, 2009, is also hereby accepted as fact.

3. Claimant's claim for benefits attributable to impairment, the extent of wage loss disability, and an attorney fee are barred by the statute of limitations.
4. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the statute of limitations has not run on any of the instant claims.

The Administrative Law Judge, whose opinion was affirmed and adopted by the majority, relied solely on Stewart v. Arkansas Glass Container, 2010 Ark. 198, __S.W.3d__ (2010). I find that this case is readily distinguishable from Stewart. In Stewart, there was no pending claim that had not been acted upon and, once the claim for additional medical benefits had been denied, the last payment of compensation was determined to have been on June 19, 2003, which was more than a year from when the claim for additional benefits was filed by letter dated December 21, 2005.

In this case, the claimant's claim for additional benefits has been granted. Therefore, she has an open, ongoing right to medical treatment, unlike Stewart. In this case, it has been specifically determined that the claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury. Thus, there has been no last payment of compensation that can be used as a basis for calculating the one-year time limit for filing a claim for additional benefits.

If the claimant's claim for additional medical benefits

had been denied, her last date of receipt of compensation would have been July 6, 2009, and the claim would have been properly barred because of the one-year time limit for filing a claim for additional benefits. That is exactly the type of situation that Stewart addresses. However, the claimant's claim for additional medical benefits was granted; therefore, this case is readily distinguishable from Stewart, since there is no date applicable in regard to last receipt of compensation of medical benefits, because the majority, by affirming and adopting the opinion of the Administrative Law Judge, has determined that the claimant is still entitled to medical benefits.

In simple terms, since the claim for additional medical benefits was granted, there is no final date of compensation. Without a final date of compensation, the statute cannot have run. Under Ark. Code Ann. §11-9-702 the claimant can still file claims for additional benefits for any benefits she chooses. There is simply not a case standing for the majority's proposition that the claimant is limited to claims for additional medical benefits.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner