

State of South Carolina
Workers' Compensation Commission

DECISION AND ORDER

THE HONORABLE Commissioner T. Scott Beck

SCWCC File No.: 1613880

Ivan Moore,

Claimant,

v.

Spartanburg Steel,

Employer,

and

Hartford Accident & Indemnity Company,

Carrier,

c/o

Sedgwick Claims Management Services, Inc.,

Defendants.

RECEIVED

FEB 17 2026

SC Court of Appeals

District Six

Hearing held in Spartanburg County, South Carolina,
on December 19, 2024

Per notice timely and properly served upon all Parties of Interest.

Appearances: Sam Bass, Esquire, of Stewart Law Offices, L.L.C.,
appeared on behalf of Claimant.

Mark Allison, Esquire, of McAngus Goudelock & Courie,
appeared on behalf of Defendants.

Purpose of Hearing: To determine issues as set forth on Forms 50 and 51

Court Reporter: ABC Reporting, 257 Summerland Drive, Batesburg-
Leesville, South Carolina 29006, (803)-532-5255

Filed: May 6, 2025

I. STATEMENT OF THE CASE

Claimant sustained admitted and compensable injury to his left knee arising out of and in the course and scope of his employment with Defendant Employer Spartanburg Steel on March 1, 2016.

On September 13, 2016, Dr. Michael Hoenig, Claimant's authorized treating physician, opined Claimant had reached maximum medical improvement with a 10% impairment rating to the left knee, required future medical treatment of cortisone injections intermittently, and assigned no permanent work restrictions. On September 20, 2016, Dr. Hoenig completed a Form 14B memorializing his opinion. Claimant continued to treat with Dr. Hoenig for intermittent injections through September 1, 2023, at which time Dr. Hoenig referred Claimant for consideration of a left knee replacement. Claimant then obtained opinions regarding treatment needs for the left knee and causal relation of same to the work accident from Dr. James O'Leary and Dr. Daniel Gerscovich.

On August 9, 2024, Claimant filed a Form 50 requesting a hearing and further medical treatment for his left lower extremity and alleging that he was not at maximum medical improvement for his left knee. On September 6, 2024, Defendants responded to Claimant's Form 50 with a Form 51 denying Claimant is entitled to additional medical treatment, temporary benefits, and that Claimant sustained permanent disability as a result of his injury. A hearing was set for November 27, 2024 but was reset to December 19, 2024, to allow Claimant time to provide Defendants with additional medical records from his primary care physician and records

from an intervening accident. This matter comes before the undersigned Commissioner on these pleadings and the sole issues of whether Claimant's need for a total knee replacement surgery is causally related to his work accident on March 16, 2016, and if Claimant has reached maximum medical improvement.

II. STIPULATIONS

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of this claim.
2. Venue is proper in Spartanburg County, South Carolina, but the parties consented to venue in Spartanburg, South Carolina.
3. The parties received proper and timely notice of the hearing.
4. The applicable average weekly wage is \$801.52, with a corresponding compensation rate of \$534.37.
5. The Commission's file is made a part of the record.

III. APA SUBMISSIONS

On behalf of Claimant:

| APA # | DOCTOR | PRACTICE | DATES | PAGES |
|---------|-------------------------------------|---|-----------------------|---------|
| 1. | Michael Hoenig, M.D. | Carolina Orthopaedic and Neurosurgical Associates | 05/10/2016 to PRESENT | 1-230 |
| 2. | James O'Leary, M.D. | Midlands Orthopaedics, PA | 01/15/24 | 231-234 |
| 3. | Daniel Gerscovich, M.D. | Carolina Orthopaedic and Neurosurgical Associates | 04/16/2024 | 235-242 |
| EXHIBIT | | | | |
| 1 | Correspondence with Defense Counsel | | 10/17/2023 to PRESENT | 1-11 |

On behalf of Defendants:

| APA # | DOCTOR | PRACTICE | DATES | PAGES |
|-------|----------------------|---|--------------------------|---------|
| 4. | Michael Hoenig, M.D. | Carolina Orthopaedic and Neurosurgical Associates | 09/13/2016 to 09/20/2016 | 243-247 |
| 5. | Michael Hoenig, M.D. | Deposition Transcript of Michael Hoenig, M.D. | 10/31/2023 | 248-290 |

IV. EVIDENCE OF THE CASE

Claimant's Testimony

Claimant was the only witness to testify. Claimant began working for Spartanburg Steel in 2004 as a temporary employee and was hired full-time on August 16, 2004. (Hrg. Tr. p. 12). He began at Spartanburg Steel performing operators "C" job, eventually working his way up to an operator "A" job, which he is currently doing. (Hrg. Tr. pp. 12-13).

Claimant began treatment with Dr. Hoenig in May 2016. (Hrg. Tr. pp. 7-8). Claimant was initially treated with cortisone injections and a left knee brace. (Hrg. Tr. p. 8). He performed no standing or doing anything on his left knee for approximately three months. (Hrg. Tr. p. 8). On August 6, 2016, Dr. Hoenig discussed with Claimant that he had a torn meniscus in his left knee, which could be treated through conservative measures or with surgery. (Hrg. Tr. pp. 8-9). He stated his knee never healed on its own, and every three months he would come back to Dr. Hoenig's office from 2016 through 2023 to get injections in his left knee. (Hrg. Tr. p. 10). Claimant would either undergo cortisone injections or a series of three injections (viscosupplementation), which stopped helping his left knee approximately a year-and-a-half ago. (Hrg. Tr. pp. 10-11). He followed up with Dr. Hoenig after the injections stopped working, who told him he would require a knee replacement. (Hrg. Tr. p. 11). Dr. Hoenig told Claimant

he would set him up for a knee replacement and would get in contact with workman comp to arrange the surgery. (Hrg. Tr. p. 12). He wants to undergo the left knee surgery due to the constant pain in his left knee, despite wearing a knee brace. (Hrg. Tr. p. 13).

On cross-examination, Claimant clarified he wanted to undergo the left knee surgery once the injections stopped relieving his pain. (Hrg. Tr. p. 14). Claimant admitted he has known he might need a left knee replacement for about a year-and-a-half. (Hrg. Tr. p. 15). Claimant confirmed he has personal health insurance which could be used to help cover the cost of the left knee replacement, but he stated he cannot afford the surgery. (Hrg. Tr. p. 16). Claimant admitted he has no problem with the care Dr. Hoenig has provided him. (Hrg. Tr. p. 16). Claimant confirmed Dr. Hoenig originally offered a left knee surgery to him in 2016 but elected to see if it will heal on its own. (Hrg. Tr. p. 17). He elected to not undergo the surgery because Dr. Hoenig told him it would heal on its own. (Hrg. Tr. p. 17).

Dr. Hoenig's Testimony (Deposition Transcript)

Dr. Hoenig's deposition was noticed by Claimant's attorney, Sam Bass, and taken on October 31, 2023. (Def.'s APA pp. 248-251). Dr. Hoenig noted he first treated Claimant on May 10, 2016. (Def.'s APA p. 252). Claimant reported to him he was injured on March 1, 2016, when he was hit on the outer part of his left knee, which caused pain on the inner part of his knee and swelling. (Def.'s APA p. 253). Dr. Hoenig provided Claimant with a hinged knee brace, prescribed Mobic, assigned work restrictions of sedentary duty, and performed a steroid injection. (Def.'s APA p. 253). Dr. Hoenig reviewed his left knee MRI that showed a degeneration of the medial meniscus, with no obvious tear, swelling, a Baker's cyst, a strain of the popliteus, edema or strain around his MCL, cartilage wear in the groove of his kneecap, and early arthritis in the inner compartment. (Def.'s APA pp. 253-254).

Dr. Hoenig next saw Claimant on June 7, 2016, where he released him to full duty and to re-check in a couple weeks. (Def.'s APA p. 254). Dr. Hoenig performed another left knee steroid injection. (Def.'s APA p. 255). Claimant returned to Dr. Hoenig on August 16, 2016, reporting great relief from the injection that gradually wore off, was using his knee brace, taking Mobic, and working full duty. (Def.'s APA pp. 255-256). Dr. Hoenig performed another left knee steroid injection and noted to put him at MMI or consider a possible knee scope at his next appointment. (Def.'s APA p. 256).

Dr. Hoenig next saw Claimant on September 13, 2016, where Dr. Hoenig noted Claimant had several injections with temporary relief, he has taken intermittent Mobic, and the brace is helpful. (Def.'s APA p. 257). Claimant also reported to Dr. Hoenig that his left knee feels 70% with all his pain located about the medial joint line. (Def.'s APA p. 257). Dr. Hoenig released Claimant to maximum medical improvement with a 10% impairment rating, future medical treatment of cortisone injections intermittently, and signed off on a Form 14B expressing the same. (Def.'s APA pp. 257-258).

On November 1, 2016, Claimant returned to Dr. Hoenig, who viewed Claimant as released to maximum medical improvement and was receiving treatment relative to his Form 14B's recommendation of future medical treatment. (Def.'s APA p. 259). Dr. Hoenig provided Claimant with a right knee injection and continued to provide Claimant with right knee injections and a prescription for Mobic through June 24, 2019. (Def.'s APA p. 259-262). Claimant expressed to Dr. Hoenig his desire for viscosupplementation injections, and he subsequently requested authorization. (Def.'s APA p. 262). The viscosupplementation injections were approved, and the series of three shots were performed between June 21, 2019, and July 5, 2019. (Def.'s APA pp. 262-264). Dr. Hoenig admitted that all the injections and treatment provided

through July 2023 were related to his work injury from March 1, 2016, and covered by his workers' compensation claim. (Def.'s APA p. 265-275).

Dr. Hoenig ordered a repeat MRI of his left knee that revealed a diffuse full-thickness chondral loss in the medial compartment with complex tearing of the medial meniscal body, edema around the MCL, cartilage loss in the patellofemoral compartment and lateral compartment, joint effusion with a Baker's cyst, and a bone infarct in the proximal tibia. (Def.'s APA p. 275). Dr. Hoenig provided Claimant with permanent work restrictions and a referral to Dr. Gerscovich for a knee replacement referral. (Def.'s APA p. 276). Dr. Hoenig opined that when he originally saw Claimant, his cartilage was already damaged, and his work injury made his pain worse. (Def.'s APA p. 280). Dr. Hoenig opined the injections made him feel fairly good, bought him some time, and then his arthritis continued to progress as arthritis naturally does, leading to more pain and needing a total knee replacement. (Def.'s APA p. 280). Dr. Hoenig further opined that Claimant's left knee is a normal progression, it has been seven years since his work injury, he began with arthritis, and he just now needs the knee replacement. (Def.'s APA p. 280). Dr. Hoenig noted that two or three years after Claimant's initial injury, he got back on his natural arthritis progression. (Def.'s APA p. 286).

Dr. Hoenig stated Claimant's left knee had a general worsening of his left knee condition that led to his need for a knee replacement. (Def.'s APA pp. 287-288). Dr. Hoenig opined that Claimant's need for a left knee replacement was not hastened by his work injury in March 2016 and would have required the surgery regardless of the work injury. (Def.'s APA p. 288).

Medical Evidence

Claimant presented to Dr. Michael Hoenig of Carolina Orthopaedic & Neurosurgical Associates (CONA) on May 10, 2016, for an evaluation of his left knee pain following a work

injury on March 1, 2016, where he was hit on the outside of his left knee. (Clt.'s APA p. 2). Claimant reported pain on the medial aspect of his left knee with swelling. (Clt.'s APA p. 2). Dr. Hoenig assessed Claimant with a mild left knee medial collateral ligament sprain, an incomplete medial meniscal tear, and knee effusion. (Clt.'s APA p. 5). Dr. Hoenig provided Claimant with a left knee injection, a hinged knee brace, Mobic, and sedentary work restrictions. (Clt.'s APA p. 5).

Claimant continued to treat conservatively with Dr. Hoenig from May 10, 2016, until he was released to maximum medical improvement on September 13, 2016, with a 10% impairment rating to the left knee and future medical treatment of cortisone injections intermittently. (Clt.'s APA pp. 2-26; Def's APA pp.243-247). Following Claimant's release to maximum medical improvement, Claimant continued to treat with Dr. Hoenig for left knee injections from November 1, 2016, through July 25, 2023. (Clt.'s APA pp. 2-221; Def's APA pp.243-247). Claimant underwent a total of 39 injections during his treatment with Dr. Hoenig. (Clt.'s APA pp. 2-221; Def's APA pp.243-247).

An updated MRI of Claimant left knee was performed on August 10, 2023, which revealed (1) diffuse full-thickness chondral loss of the medial compartment with complex tearing of the medial meniscal body and anterior horn, (2) edema about the MCL, (3) mild chondral loss of the patellofemoral and lateral compartments, (4) chronic appearing bone infarct of the proximal tibial metaphysis, and (5) small joint effusion and small Baker's cyst. (Clt.'s APA pp. 223). On September 1, 2023, Dr. Hoenig reviewed Claimant's MRI results and referred him to Dr. Gerscovich for a left knee replacement due to his fairly severe left knee arthritis. (Clt.'s APA pp. 225-230).

On January 15, 2024, Claimant presented to Dr. James O'Leary for an independent medical evaluation of his chronic left knee pain. (Cl't.'s APA pp. 231-233). Claimant reported his knee was doing well until his work injury on March 1, 2016, and he has received continued treatment with injections for his left knee over the past 7 years. (Cl't.'s APA pp. 233). Dr. O'Leary reviewed Claimant's August 10, 2023, MRI, medical records from CONA, and Dr. Hoenig's deposition transcript. (Cl't.'s APA pp. 234). Dr. O'Leary opined that Claimant is not at maximum medical improvement, he never reached a plateau, and his current symptoms are related to his March 1, 2016, work injury. (Cl't.'s APA pp. 234). Dr. O'Leary recommended a total knee arthroplasty and provided work restrictions of light duty with no kneeling, squatting, crawling, or climbing with primarily sedentary work. (Cl't.'s APA pp. 234).

On April 16, 2024, Claimant presented to Dr. Daniel Gerscovich for a second opinion of his left knee. (Cl't.'s APA pp. 235-238). Dr. Gerscovich opined Claimant has significant left knee arthritis and has failed conservative treatment spanning eight years and assessed him with osteoarthritis of the left knee. (Cl't.'s APA pp. 238). Dr. Gerscovich noted his arthritis has progressed significantly from his pre-existing chondro damage and recommended Claimant proceed with a total knee replacement. (Cl't.'s APA pp. 238).

V. FINDINGS OF FACT

Based upon Claimant's testimony, the Commissioner's file, and APA submissions, the undersigned Commissioner makes the following findings of fact:

1. Claimant's objection to Defendants' APA Submission 291-292 (medical questionnaire signed by Dr. Michael Hoenig) is sustained and those pages are removed from the record.

2. Claimant's objection to the deposition testimony of Dr. Michael Hoenig is overruled and admitted into evidence. Claimant's position that it should be excluded with the medical questionnaire is misplaced. The questionnaire is excluded because Defendants improperly contacted the physician in violation of S.C. Code Ann. § 42-15-95. The deposition was then noticed by CLAIMANT in an attempt to change Dr. Hoenig's opinion. Other than participating in the deposition, Defendant had no role in setting it. To rule otherwise would be to conclude that Defendants acted improperly in participating in the deposition, which would be clearly erroneous.

3. The question before me is whether Claimant's need for a total knee replacement is causally related to the March 1, 2016 admitted injury. I must conclude that it is not for the following reason: Dr. Hoenig has treated Claimant exclusively since his date of injury and continuing for the next eight years, putting him in the best position to determine a causal relationship over two independent medical evaluations conducted eight years after the injury.

4. More weight is afforded to the opinions of Dr. Michael Hoenig, Claimant's authorized treating physician for eight years, than the opinions of Dr. Daniel Gerscovich and Dr. James O'Leary, both of whom only evaluated Claimant one time on an IME basis.

5. Claimant's need for a total knee replacement is not casually related to his admitted left knee injury on March 1, 2016.

6. Claimant was originally released to maximum medical improvement by Dr. Hoenig on September 20, 2016 but continued to treat Claimant for nearly seven years with some treatment that exceeded the future medical treatment listed on his completed Form 14B.

7. Dr. Hoenig never again placed Claimant at maximum medical improvement following the initial release on September 13, 2016.

8. Claimant is not at maximum medical improvement for his left knee.

VI. CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-15-95, Claimant's objection to Defendants' APA Submission 291 to 292 is sustained and those pages are removed from the record.

2. Pursuant to S.C. Code Ann. § 42-15-95, Claimant's objection to the deposition testimony of Dr. Hoenig is overruled, and it is admitted due to the fact that Claimant noticed and conducted Dr. Hoenig's deposition in an attempt to change his medical opinion.

3. Pursuant to S.C. Code Ann. §§ 42-1-160, 42-15-60, and applicable case law, Claimant is not entitled to a total left knee replacement as it is not causally related to his March 1, 2016, work injury. (*See Jeffers v. Manetta Mills (1939)*, "The burden rests upon the claimant to show by competent testimony, not only the fact of injury but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment. The award, of course, must be based upon something more than surmise or conjecture."; *Ashley v. South Carolina Highway Dep't (1948)*, "In order to justify an award, it is necessary . . . that such medical experts go further and testify at least that in their professional opinion the result in question 'most probably' came from the cause alleged.")

4. Pursuant to *Sharpe v. Case Produce, Inc., (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102*, the Commission determines the weight and credit to be given to the expert testimony.

5. Pursuant to S.C. Code Ann. § 42-15-60, Claimant has not reached maximum medical improvement for his left knee for his March 1, 2016, injury.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law:

IT IS ORDERED that Claimant is not entitled to a left total knee replacement surgery, as it is not causally related to Claimant's work accident on March 1, 2016.

IT IS FURTHER ORDERED that Claimant is not at maximum medical improvement.

AND SO IT IS ORDERED.



Commissioner T. Scott Beck
South Carolina Workers' Compensation Commission

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Shawnee Radcliff on May 6, 2025

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Gene McCaskill, The Honorable Melody L. Jarnes, The Honorable Cynthia C. Dooley

SCWCC File No.: 1613880

Ivan Moore,

Claimant,

v.

Spartanburg Steel,

Employer,

and

Hartford Accident & Indemnity Company,

Carrier,

c/o

Sedgwick Claims Management Services, Inc.,

Defendants.

AFFIRMED

Hearing held virtually on August 25, 2025
Per notice timely and properly served upon all Parties of Interest.

Appearances: Samuel Bass, Esquire, of Stewart Law Offices, LLC,
appeared on behalf of Claimant/Appellant.

Mark Allison, Esquire, of McAngus Goudelock & Couric,
LLC, appeared on behalf of Defendants/
Respondent/Cross-Appellant.

Court Reporter: Megan Brown, ABC Reporting Services
803-730-3015, Cwiz1959@gmail.com

Filed: January 29, 2026

I. STATEMENT OF THE CASE

Claimant sustained admitted and compensable injury to his left knee arising out of and in the course and scope of his employment with Defendant Employer Spartanburg Steel on March 1, 2016.

On September 13, 2016, Dr. Michael Hoenig, Claimant's authorized treating physician, opined Claimant had reached maximum medical improvement with a 10% impairment rating to the left knee, required future medical treatment of cortisone injections intermittently, and assigned no permanent work restrictions. On September 20, 2016, Dr. Hoenig completed a Form 14B memorializing his opinion. Claimant continued to treat with Dr. Hoenig for intermittent injections through September 1, 2023, at which time Dr. Hoenig referred Claimant for consideration of a left knee replacement. Claimant then obtained opinions regarding treatment needs for the left knee and causal relation of the same to the work accident from Dr. James O'Leary and Dr. Daniel Gerscovich.

On August 9, 2024, Claimant filed a Form 50 requesting a hearing and further medical treatment for his left lower extremity and alleging that he was not at maximum medical improvement for his left knee. On September 6, 2024, Defendants responded to Claimant's Form 50 with a Form 51 denying Claimant is entitled to additional medical treatment, temporary benefits, and that Claimant sustained permanent disability as a result of his injury. A hearing was set for November 27, 2024 but was reset to December 19, 2024 to allow Claimant time to provide Defendants with additional medical records from his primary care physician and records from an

intervening accident. The hearing was to address these pleadings and the sole issues of whether Claimant's need for a total knee replacement surgery is causally related to his work accident on March 1, 2016, and if Claimant has reached maximum medical improvement.

On December 19, 2024, a hearing was held before the single commissioner, and on May 6, 2025, the single commissioner issued an order in which they found that the Claimant was not entitled to a left total knee replacement surgery, as it was not causally related to Claimant's work accident on March 1, 2016, and that the Claimant was not at maximum medical improvement.

On May 12, 2025, the Claimant filed an appeal, claiming that the single commissioner erred in (1) admitting the deposition testimony of Dr. Michael Hoenig; (2) affording more weight to the opinion of Dr. Hoenig regarding causation and Claimant's need for a total knee replacement than the opinions of Drs. Gerscovich and O'Leary regarding the same; and (3) ruling that the total left knee replacement is not causally related to his work injury on March 1, 2016. On May 15, 2025, the Employer filed a cross-appeal, claiming that the single commissioner erred in ruling that the Claimant has not reached maximum medical improvement. A hearing was held before the appellate panel on August 25, 2025. We affirm the decision of the single commissioner.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

The verbatim findings of fact and conclusions of law in the appealed order of the single commissioner are as follows:

Single Commissioner Findings of Fact

1. Claimant's objection to Defendants' APA Submission 291-292 (medical questionnaire signed by Dr. Michael Hoenig) is sustained and those pages are removed from the record.

2. Claimant's objection to the deposition testimony of Dr. Michael Hoenig is overruled and admitted into evidence. Claimant's position that it should be excluded with the medical questionnaire is misplaced. The questionnaire is excluded because Defendants improperly contacted the physician in violation of S.C. Code Ann. § 42-15-95. The deposition was then noticed by Claimant in an attempt to change Dr. Hoenig's opinion. Other than participating in the deposition, Defendant had no role in setting it. To rule otherwise would be to conclude that Defendants acted improperly in participating in the deposition, which would be clearly erroneous.

3. The question before me is whether Claimant's need for a total knee replacement is causally related to the March 1, 2016 admitted injury. I must conclude that it is not for the following reason: Dr. Hoenig has treated Claimant exclusively since his date of injury and continuing for the next eight years, putting him in the best position to determine a causal relationship over two independent medical evaluations conducted eight years after the injury.

4. More weight is afforded to the opinions of Dr. Michael Hoenig, Claimant's authorized treating physician for eight years, than the opinions of Dr. Daniel Gerscovich and Dr. James O'Leary, both of whom only evaluated Claimant one time on an IME basis.

5. Claimant's need for a total knee replacement is not causally related to his admitted left knee injury on March 1, 2016.

6. Claimant was originally released to maximum medical improvement by Dr. Hoenig on September 20, 2016 but continued to treat Claimant for nearly seven years with some treatment that exceeded the future medical treatment listed on his completed Form 14B.

7. Dr. Hoenig never again placed Claimant at a maximum medical improvement following the initial release on September 13, 2016.

8. Claimant is not at maximum medical improvement for his left knee.

Single Commissioner Conclusions of Law

1. Pursuant to S.C. Code Ann § 42-15-95, Claimant's objection to Defendants' APA Submission 291 to 292 is sustained and those pages are removed from the record.

2. Pursuant to S.C. Code Ann § 42-15-95, Claimant's objection to the deposition testimony of Dr. Hoenig is overruled, and it is admitted due to the fact that Claimant noticed and conducted Dr. Hoenig's deposition in an attempt to change his medical opinion.

3. Pursuant to S.C. Code Ann. §§ 42-1-169, 42-15-60, and applicable case law, Claimant is not entitled to a total left knee replacement as it is not causally related to his March 1, 2016, work injury. (*See Jeffers v. Manetta Mills (1939)*, "The burden rests upon the claimant to show by competent testimony, not only the fact of injury but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of employment. The award, of course, must be based upon something more than surmise or conjecture."; *Ashley v. South Carolina Highway Dep't (1948)*, "In order to justify an award, it is necessary . . . that such medical experts go further and testify at least that in their professional opinion the result in question 'most probably' came from the cause alleged.")

4. Pursuant to *Sharpe v. Case Produce, Inc., (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102*, the Commission determines the weight and credit to be given to expert testimony.

5. Pursuant to S.C. Code Ann § 42-15-60, Claimant has not reached maximum medical improvement for his left knee for his March 1, 2016, injury.

III. ISSUES ON APPEAL

Issues on Appeal by Claimant/Appellant

1. Did the single commissioner err in admitting the deposition testimony of Dr. Michael Hoenig?
2. Did the single commissioner err in affording more weight to the opinion of Dr. Hoenig regarding causation and Claimant's need for a total knee replacement than the opinions of Drs. Gerscovich and O'Leary regarding the same?
3. Did the single commissioner err in ruling that the total left knee replacement is not causally related to his work injury on March 1, 2016?

Issues on Appeal by Respondent/Cross-Appellant

1. Did the single commissioner err in ruling that the Claimant has not reached maximum medical improvement?

IV. DECISION OF THE APPELLATE PANEL

Appellate Panel's Findings of Fact

1. Claimant's objection to Defendants' APA Submission 291-292 (medical questionnaire signed by Dr. Michael Hoenig) is sustained and those pages are removed from the record.
2. Claimant's objection to the deposition testimony of Dr. Michael Hoenig is overruled and admitted into evidence. Claimant's position that it should be excluded with the medical questionnaire is misplaced. The questionnaire is excluded because Defendants improperly contacted the physician in violation of S.C. Code Ann. § 42-15-95. The deposition was then noticed by Claimant in an attempt to change Dr. Hoenig's opinion. Other than participating in the

deposition, Defendant had no role in setting it. To rule otherwise would be to conclude that Defendants acted improperly in participating in the deposition, which would be clearly erroneous.

3. The question before the Panel is whether Claimant's need for a total knee replacement is causally related to the March 1, 2016 admitted injury. We conclude that it is not for the following reason: Dr. Hoenig has treated Claimant exclusively since his date of injury and continuing for the next eight years, putting him in the best position to determine a causal relationship over two independent medical evaluations conducted eight years after the injury.

4. More weight is afforded to the opinions of Dr. Michael Hoenig, Claimant's authorized treating physician for eight years, than the opinions of Dr. Daniel Gerscovich and Dr. James O'Leary, both of whom only evaluated Claimant one time on an IME basis.

5. Claimant's need for a total knee replacement is not causally related to his admitted left knee injury on March 1, 2016.

6. Claimant was originally released to maximum medical improvement by Dr. Hoenig on September 20, 2016 but continued to treat Claimant for nearly seven years with some treatment that exceeded the future medical treatment listed on his completed Form 14B.

7. Dr. Hoenig never again placed Claimant at a maximum medical improvement following the initial release on September 13, 2016.

8. Claimant is not at maximum medical improvement for his left knee.

Appellate Panel's Conclusions of Law

Based on the foregoing findings of fact, the undersigned commissioners make the following conclusions of law:

1. Pursuant to S.C. Code Ann § 42-15-95, Claimant's objection to Defendants' APA Submission 291 to 292 is sustained and those pages are removed from the record.

2. Pursuant to S.C. Code Ann § 42-15-95, Claimant's objection to the deposition testimony of Dr. Hoenig is overruled, and it is admitted due to the fact that Claimant noticed and conducted Dr. Hoenig's deposition in an attempt to change his medical opinion.

3. Pursuant to S.C. Code Ann. §§ 42-1-169, 42-15-60, and applicable case law, Claimant is not entitled to a total left knee replacement as it is not causally related to his March 1, 2016, work injury. (*See Jeffers v. Manetta Mills* (1939), "The burden rests upon the claimant to show by competent testimony, not only the fact of injury but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of employment. The award, of course, must be based upon something more than surmise or conjecture."; *Ashley v. South Carolina Highway Dep't* (1948), "In order to justify an award, it is necessary . . . that such medical experts go further and testify at least that in their professional opinion the result in question 'most probably' came from the cause alleged.")

4. Pursuant to *Sharpe v. Case Produce, Inc.*, (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102, the Commission determines the weight and credit to be given to expert testimony.

5. Pursuant to S.C. Code Ann § 42-15-60, Claimant has not reached maximum medical improvement for his left knee for his March 1, 2016, injury.

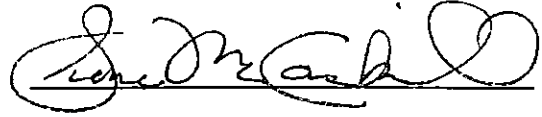
ORDER

Based on the preceding findings of fact and conclusions of law,

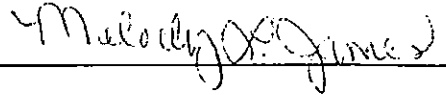
IT IS HEREBY ORDERED that Claimant is not entitled to a left total knee replacement surgery, as it is not causally related to Claimant's work accident on March 1, 2016.

IT IS FURTHER ORDERED that Claimant is not at maximum medical improvement.

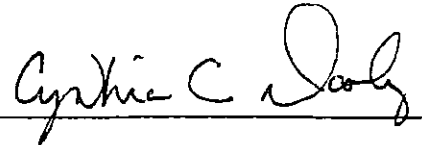
AND SO IT IS ORDERED.



Gene McCaskill, Commissioner



Melody L. James, Commissioner



Cynthia C. Dooley, Commissioner

_____ Date

Columbia, SC

Order Served via email:

| | |
|---|--|
| Mark A. Allison McAngus Goudelock & Courie mallison@mgclaw.com | Samuel Bass Stewart Law Offices sam@stewartlawoffices.net |
|---|--|

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on January 29, 2026

Stewart Law Offices
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Spartanburg, SC 29302

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Clerk of the South Carolina Court of Appeals
PO BOX 11629
COLUMBIA SC 29211-1629