

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SC Workers' Compensation Commission
Appellate Panel

WCC File No. 1811083

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RECEIVED
JUN 30 2026
SC Court of Appeals

Kenneth Scott, Claimant, Appellant,

v.

Schaeffler Group USA, Inc., Employer, and
Phoenix Insurance Company, Carrier, Respondents.

NOTICE OF APPEAL

Appellant, Kenneth Scott, appeals the Decision and Order of the SC Workers' Compensation Commission Appellate Panel filed June 5, 2026. Appellant received notice of entry of the Appellate Panel Decision and Order (the final Agency Decision) by electronic mail on June 5, 2026.

Pursuant to SC Code §42-17-60 and §1-23-380, the grounds of the appeal and/or the errors of law presented to the Court are set out hereinafter:

1. That the Commission erred as a matter of law and fact based on the unquestioned evidence in the Record by not awarding

the Appellant total and permanent disability based on wage loss under the two or more body part rule applicable to wage loss. Outside of the specific injury to the left shoulder, there is documented evidence of excision of the distal clavicle, a separately rated member; and in physical therapy impairment to use of the left elbow; and documented evidence of loss of strength and grip in the left hand, both of which are separately rated members affected by the left shoulder injury and the injuries from and as a result of the accident.

2. That the Commission erred as a matter of law and fact at a minimum by not making an award to the Appellant for partial loss of earning capacity based on the uncontested evidence in the Record that the Appellant who worked for the employer for over thirty-eight (38) years had specific injury and loss of use to the Appellant's left shoulder and the clavicle, a rated body part under R. 67-1101(C); and the medical records, including the records from the two (2) Functional Capacity Evaluations performed establish that the injuries have affected the Appellant's left arm, elbow, and hand; with the left arm and left hand being separately rated members.

3. That the Commission erred as a matter of law and fact specifically in making Findings of Fact #26 thru #32, finding that the Appellant had not met his burden of proof finding that the Appellant's hand was not either directly related as an

injury stemming from the accident or as an affected body part from the injury by accident where there is absolutely no evidence in the Record to establish that the Appellant's injury, functional impairment and loss of use is not related to the accident and/or did not stem from the accident, and/or was not caused by the accident.

4. That the Commission erred as a matter of law and fact by not making an Award for loss of use of the hand and loss of use of the clavicle under SC Code §42-9-30, and R. 67-1101.

5. That the Commission erred as a matter of law and fact by not finding the Defendants responsible for the medical care for treatment of the left shoulder; and denying the Defendants' responsibility for future medical care as outlined in the uncontested evidence including Defendants' admission of and as set out in the Medicare Set-Aside agreement, and as set forth in the Defendants' own Prehearing Brief and Form 51 wherein they admit responsibility for the full total shoulder replacement. The Commissioner specifically erred by making Findings of Fact in that regard including Findings of Fact #15, #16, #17, #18, #19, #20, #22, #24 and #35.

6. That the Commission erred as a matter of fact and law by failing to making a Finding of Fact about the uncontested evidence in the Record and the specific admission of responsibility by the Defendants for medical care in the

September 15, 2022 workers' compensation Medicare Set-Aside arrangement letter wherein the Center for Medicare Management notified the Defendants that:

"We have evaluated your proposed WC MSA amount and have determined that \$42,109.00 adequately considers Medicare's interest with respect to Medicare-covered future medical items and services, including prescription drugs."

7. That the Commission erred as a matter of law and fact by not ordering that the medical care provided by Dr. Mark A. Brenner, which was paid for by Medicare, be paid for by the Defendants at least by reimbursing Medicare per the Medicare Set-Aside; and by finding and requiring the Appellant to seek approval prior to the provision of that medical care; wherein under law a claimant has never been required by our Courts or the Act to do anything other than request medical care and where that medical care is not provided, needed medical care shall not be denied or delayed medical care where it has not been provided.

8. That the Commission erred as a matter of law by not performing their statutory responsibility to review the Record based on a liberal interpretation of the law in favor of benefits to the injured worker;

"The Workers' Compensation Act should be liberally construed in furtherance of the beneficial purposes for which it was created."

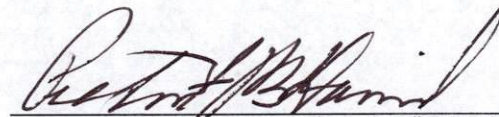
Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941);

Nicholson v. SC Dept. of Social Services, 411 S.C. 381, 769 S.E.2d 1 (2015); Brown v. Southeastern Services, LLC, supra, (SC App. 2025); and by failing to make the greater award for loss of earning capacity either under SC Code 42-9-10 and/or under §42-9-20 as required by our Appellate Courts:

"policy behind allowing workers' compensation claimant to proceed under general disability sections allows the claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the claimant the opportunity to establish disability greater than the presumptive disability provided for under the scheduled member section...."

Brown v. Owens Steel Co., Inc., 316 S.C. 278, 450 S.E.2d 57 (SC App. 1994, cert. den., 1995); Dent v. East Richland County Public Serv. Dist., 423 S.C. 193, 813 S.E.2d 886 (SC App. 2018, reh. den. 5/29, cert. den. 9/21, 2018).

Respectfully submitted,



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Attorneys for Appellant

June 25, 2026

Other Counsel of Record:

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Attorney for Respondents

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PROOF OF SERVICE

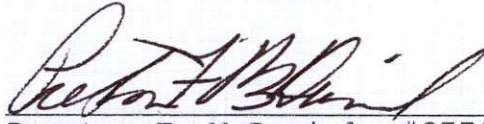
I certify that I have served the **NOTICE OF APPEAL** by
depositing a copy of it in the United States Mail, postage
prepaid, on June 25, 2026 addressed to:

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

AND also serving a copy upon:

Candace G. Hindersman, Esquire
Willson Jones Carter & Baxley
500 Taylor Street, Ste. 202
Columbia, South Carolina 29201

Respectfully submitted,



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June 25, 2026

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Proudly representing injured workers
for over 45 years.

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June 25, 2026

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Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: **Kenneth Scott, Claimant v. Schaeffler Group USA, Inc.,
Employer, and Phoenix Insurance Company, Carrier.**
SCWCC File No.: 1811083

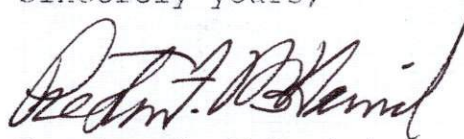
Dear Ms. Kitchings:

Enclosed for filing with the Court is the original and one
(1) copy of our Notice of Appeal in the above referenced matter.
Also, enclosed are the following:

1. Proof of Service of the Notice of Appeal on the
Respondents;
2. a copy of the Order which is to be challenged on appeal;
and
3. the required filing fee of \$250.00.

I hope this is sufficient for filing with the Court but
should you need any additional information, please let us know.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Amy Bracy, Judicial Director, SCWCC
Gerald Malloy, Esquire
Candace G. Hindersman, Esquire



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