

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Aisha Taylor, The Honorable Cynthia C. Dooley, The
Honorable T. Scott Beck

SCWCC File No.: 1811083

Kenneth Scott,

Claimant,

v.

Schaeffler Group USA, Inc., Employer,

and

Phoenix Insurance Co., Carrier,

Defendants.

AFFIRMED

Hearing held virtually on April 13, 2026

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

Appearances: Preston McDaniel appeared on behalf of
Claimant/Appellant.

Candace Hindersman appeared on behalf of Defendants/
Respondents.

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

Filed:

June 5, 2026

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JUN 30 2026
SC Court of Appeals

EXHIBIT

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I. STATEMENT OF THE CASE

This claim involves an admitted left shoulder injury arising out of an accident on June 26, 2018. Authorized treatment was initially provided with Dr. DiStefano to MMI in July 2019 with Claimant returning to full duty work. Claimant requested a second opinion that was provided with Dr. Aspey, on August 6, 2020, but Claimant was going to talk to the case manager about a doctor closer to his home. Claimant continued to report symptoms, and an independent medical evaluation was provided in Columbia, SC with Dr. David Fulton on July 14, 2021. Dr. Fulton found he was not at MMI and recommended a reverse total shoulder replacement. Surgery was not scheduled because the Claimant did not want it at that time. Ultimately, because his condition worsened beginning March 5, 2024 Claimant requested authorization with a doctor of his choosing under the NC or SC Fee Schedule. Authorization was not given and Claimant underwent a left total shoulder replacement with Dr. Brenner on April 4, 2025.

The parties agreed Claimant is at MMI, and the primary issues before the single commissioner were the determination of disability and medical entitlement. Claimant alleged that he is permanently and totally disabled. Alternatively, if Claimant was not found to be permanently and totally disabled, he argued he is entitled to an award based on wage loss. Claimant further contended that if he was not found to be permanently and totally disabled and not be entitled to an award for wage loss, he is entitled to scheduled-member awards for both the left shoulder, clavicle, and the left hand.

Defendants argued that Claimant is not permanently and totally disabled as a result of this accident and that he is entitled to a scheduled member award to the shoulder only. Defendants denied any causally related injury to the left hand, claiming that the only

compensable injury is to the left shoulder.

Claimant also sought authorization for treatment or payment to CMS up to the amount of the total shoulder replacement set out in a prior MSA for treatment he unilaterally received from Dr. Brenner. Defendants argued that the prior MSA does not act as evidence of their responsibility to pay an out of state, unauthorized provider.

On August 13, 2025, a hearing was held before the single commissioner, and on January 22, 2026, the single commissioner issued an order in which they found, in part, that: (1) the Claimant had reached MMI and was entitled to an award of permanency based on 70% disability to the left shoulder; (2) Claimant is entitled to repair, maintenance, and replacement of retained hardware, but Claimant is otherwise not entitled to future medical care; (3) there is no causally related injury to the left hand; and (4) the Defendants are not responsible for paying for the medical treatment the Claimant unilaterally obtained from Dr. Brenner for the left shoulder.

On February 5, 2026, Claimant filed an appeal, claiming that the Commissioner erred by (1) failing to find that Claimant was not permanently and totally disabled, (2) failing to find other body parts to be compensable, specifically Claimant's clavicle, left elbow, and left hand, (3) finding that Defendants did not have to reimburse Claimant for the shoulder treatment he sought with Dr. Brenner, (4) finding that Defendants were not responsible for paying for future medical care other than repair, maintenance, and replacement of Claimant's retained hardware, and (5) failing to make an award to Claimant for partial loss of earning capacity.

A hearing was held before the appellate panel on April 13, 2026. 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. The Claimant has an admitted injury to his left shoulder that occurred on June 25, 2018.
2. The parties agree that the Claimant is at maximum medical improvement.
3. The Claimant initially treated with McLeod Occupational Health.
4. After conservative care with McLeod Occupational Health, the Claimant was referred for orthopedic care.
5. The Claimant was then evaluated and treated by Dr. DiStefano (orthopedist). Dr. DiStefano performed surgery on October 3, 2018. (Claimant's APA p. 120-122.) Dr. DiStefano performed a left shoulder arthroscopy, chondroplasty of the humerus, chondroplasty of the glenoid, debridement of SLAP, upper subscapularis rotator cuff repair, debridement of the partial rotator cuff tear, subacromial decompression, open proximal biceps tenodesis, and open distal clavicle excision.
6. Dr. DiStefano placed Claimant at MMI on July 9, 2019 (Defendants' APA p. 1-2). He assigned a 20% impairment to the left shoulder with no permanent physical limitations.
7. The Claimant returned to work with the Employer following his work injury. Claimant worked for the employer for 38 years. He retired four months after returning from his work related injury. Claimant testified this was because he felt he could not do the work with his shoulder.

8. In January of 2020, the Claimant began parttime work with Bo-Buck Mills. (Defendants' APA 26). He worked with them from approximately January 6, 2020 to April 19, 2023. (Defendants' APA p. 23.)
9. After complaining of continued symptoms, the Claimant was seen by Dr. Aspey (orthopedist) from June 25, 2020 until August 6, 2020.
10. On August 6, 2020, Dr. Aspey opined that the Claimant would eventually need a total shoulder replacement when he was ready for it. (Claimant's APA p. 87) He reported that the Claimant would like to follow up with a surgeon closer to his home, as Dr. Aspey's office was a two hour drive. He issued restrictions of light duty work, consisting of no lifting over ten pounds.
11. An IME was performed by Dr. Fulton (orthopedist) on July 14, 2021. (Defendants' APA p. 4-7.)
12. Dr. Fulton indicated that the Claimant was not at MMI and also recommended a total shoulder replacement. Dr. Fulton issued restrictions of no more than sedentary duty with the left arm. (Defendants' APA p. 6.)
13. The Claimant elected not to have the total shoulder replacement surgery in 2021. (Record as a whole.)
14. The Claimant continued to work part time with Bo-Buck until April 19, 2023. (Def. APA 26-38)
15. On March 5, 2024, the Claimant indicated that his condition was worse and he decided that he wanted to proceed with surgery. He stated that he wanted the surgery to be performed by a surgeon of his own selection. (Claimant's APA p. 152)

16. Harriet Fowler performed a vocational evaluation on May 8, 2024. (APA 81). She relied on the restrictions that Dr. Aspey and Dr. Fulton issued to the Claimant prior to his left shoulder replacement surgery and MMI. The Claimant has now had the surgery and the parties agree that he is at MMI. The Claimant's permanent restrictions have not been addressed by Dr. Brenner.
17. Dr. Brenner is an orthopedist located in North Carolina. The Claimant was initially seen by his office on May 30, 2024. (Claimant's APA p.147)
18. On January 24, 2025, the Claimant indicated by letter to the Commission that he was withdrawing his Form 50. (Claimant's APA p. 140). The letter stated that the Claimant had met with Dr. Brenner on January 20, 2025 and had a pre-operative appointment scheduled.
19. A reverse total shoulder arthroplasty was performed by Dr. Brenner on April 4, 2025. (Claimant's APA p. 60.) This was not authorized by Defendants.
20. The Claimant's request that Defendants be ordered to pay for the surgery performed by Dr. Brenner is denied.
21. The Defendants had provided the Claimant with two South Carolina surgeons, Dr. Aspey and Dr. Fulton, who opined that the Claimant needed total shoulder replacement surgery.
22. The Claimant did not request that a change in care be ordered by the Commission before proceeding with the surgery with Dr. Brenner. None of the three orthopedic surgeons recommending the replacement surgery opined that surgery was emergent.
23. The last note of Dr. Brenner is July 9, 2025. (Claimant's APA p. 54) Dr. Brenner indicated that the Claimant was doing very well and had excellent motion. The Claimant was instructed to follow up as needed and continue therapy as long as it was beneficial.
24. Dr. Brenner did not address MMI and what permanent restrictions the Claimant may have.

25. The Claimant requests that his left hand be found to be a causally related or affected body member.
26. The Claimant has not met his burden of proof that his left hand is a causally related or affected body member.
27. The initial records do not contain a mention of injury or affect to the Claimant's left hand.
28. Dr. DiStefano, Dr. Aspey, Dr. Fulton, and Dr. Brenner do not state that there was an injury or affect to the Claimant's left hand. None of these four orthopedists state there is a causally related injury to the left hand.
29. The Claimant points out that Tracy Hill, physical therapist, of Columbia Rehabilitation Clinic, Inc. states that there is a possibility of overuse in her April 10, 2024 letter. (Claimant's APA p. 2.)
30. Previously, Tracy Hill, PT, had noted in her letter of March 27, 2024 that the weakness in the Claimant's left hand grip is most likely due to limited use of his left upper extremity. (Claimant's APA p. 3.)
31. However, in the most recent opinion of Tracy Hill, PT (April 10, 2024) that addresses the issue of overuse, she states that there is a "possibility." (Claimant's APA p. 2.)
32. As the initial records do not indicate an injury to the Claimant's hand, none of the four orthopedic physicians address an issue of the left hand nor state there is a causally related injury of Claimant's left hand, and Tracy Hill's most recent opinion notes only a "possibility," the causal relationship of the left hand to this accident has not been established.
33. The Claimant has permanent partial disability of seventy (70%) percent to his left shoulder. (Record as a whole, including Transcript of Hearing and APAs.)

34. The hardware in Claimant's left shoulder is to be maintained, replaced, or repaired pursuant to the provisions of the Act. (Section 42-15-60)

35. As Dr. Brenner does not address whether or not the Claimant will need future medical treatment, no future medical treatment is awarded. (Section 42-15-60).

Single Commissioner Conclusions of Law

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Pursuant to S.C. Code Ann. 42-15-60, "During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown." In accordance with this provision, Defendant's provided authorized medical care for Claimant's left shoulder injury. At first, Claimant did not want to proceed with the total shoulder replacement recommended by the authorized providers. Later, Claimant proceeded with a provider of his own choosing and proceeded on his own with Dr. Brenner. He did not proceed to a hearing to show good cause for a transfer of care prior to proceeding unilaterally with a provider of his own selection. There has been no demonstration that the care sought was emergent. Claimant's request that Defendants now be ordered to pay for the care he received from Dr. Brenner is denied.
2. Pursuant to S.C. Code Ann. 42-1-160, Claimant has failed to demonstrate by a preponderance of the evidence that he sustained a causally related injury to the left hand.

As such there is no compensable injury to the left hand and he is not entitled to any benefit as to the left hand pursuant to the Act. Of note, Tracy Hill is a physical therapist and not a medical doctor. Further, her opinion regarding causation on the left hand states it is 'possibly' from disuse due to the left shoulder pain. This does not rise to the standard of 'more likely than not' stated to a reasonable degree of medical certainty that the hand is causally related. None of the four orthopedic specialists/medical doctors who evaluated and treated Claimant in this claim made a statement causally relating an injury to the hand to a reasonable degree of medical certainty. The greater weight of the evidence, including Claimant's testimony that he did not report the left hand to his doctors, supports a finding that there is no causally related injury to the left hand.

3. Pursuant to S.C. Code Ann. 42-1-160, Claimant has sustained a causally related injury to the left shoulder only.
4. Pursuant to S.C. Code Ann. 42-9-30, Claimant has sustained a disability of seventy (70%) percent to his left shoulder.
5. Pursuant to S.C. Code Ann. 42-9-10; 42-9-20 and *Singleton v. Young Lumbar Co.*, 236 S.C. 454 (1960), Claimant is not permanently and totally disabled nor partially disabled such that he is entitled to an award based on wage loss. The preponderance of the evidence does not support an incapacity for gainful employment. This evidence includes his subsequent employment with Bo-Buck after this accident, the vocational evaluation from Harriet Fowler pre-dating the total shoulder replacement such that it does not reflect these treatment outcomes, no work restrictions being addressed by Dr. Brenner (who performed the total shoulder replacement surgery), testimony regarding employer,

Schaeffler's, willingness to return Claimant to work, and Claimant's testimony regarding his current activities.

6. Pursuant to S.C. Code Ann. 42-15-60, Defendants will be responsible for the maintenance, repair, and replacement of the retained hardware in the left shoulder resulting from the total shoulder replacement surgery as detailed by Dr. Brenner in the surgical note.
7. Pursuant to S.C. Code Ann. 42-15-60, Claimant is not entitled to other causally related future medical care.

III. ISSUES ON APPEAL

1. Did the commissioner err by failing to find that the Claimant was not permanently and totally disabled?
2. Did the commissioner err by failing to find other body parts to be compensable, specifically the Claimant's clavicle, left elbow, and left hand?
3. Did the commissioner err by finding that the Defendants did not have to reimburse the Claimant for the shoulder treatment he sought with Dr. Brenner?
4. Did the commissioner err by finding that the Defendants were not responsible for paying for future medical care other than repair, maintenance, and replacement of the Claimant's retained hardware?
5. Did the single commissioner err by failing to make an award to the Claimant for partial loss of earning capacity?

IV. DECISION OF THE APPELLATE PANEL

Appellate Panel's Findings of Fact

1. The Claimant has an admitted injury to his left shoulder that occurred on June 25, 2018.
2. The parties agree that the Claimant is at maximum medical improvement.
3. The Claimant initially treated with McLeod Occupational Health.
4. After conservative care with McLeod Occupational Health, the Claimant was referred for orthopedic care.
5. The Claimant was then evaluated and treated by Dr. DiStefano (orthopedist). Dr. DiStefano performed surgery on October 3, 2018. (Claimant's APA p. 120-122.) Dr. DiStefano performed a left shoulder arthroscopy, chondroplasty of the humerus, chondroplasty of the glenoid, debridement of SLAP, upper subscapularis rotator cuff repair, debridement of the partial rotator cuff tear, subacromial decompression, open proximal biceps tenodesis, and open distal clavicle excision.
6. Dr. DiStefano placed Claimant at MMI on July 9, 2019 (Defendants' APA p. 1-2). He assigned a 20% impairment to the left shoulder with no permanent physical limitations.
7. The Claimant returned to work with the Employer following his work injury. Claimant worked for the employer for 38 years. He retired four months after returning from his work related injury. Claimant testified this was because he felt he could not do the work with his shoulder.
8. In January of 2020, the Claimant began parttime work with Bo-Buck Mills. (Defendants' APA 26). He worked with them from approximately January 6, 2020 to April 19, 2023. (Defendants' APA p. 23.)

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10. On August 6, 2020, Dr. Aspey opined that the Claimant would eventually need a total shoulder replacement when he was ready for it. (Claimant's APA p. 87) He reported that the Claimant would like to follow up with a surgeon closer to his home, as Dr. Aspey's office was a two hour drive. He issued restrictions of light duty work, consisting of no lifting over ten pounds.
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parties agree that he is at MMI. The Claimant's permanent restrictions have not been addressed by Dr. Brenner.

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20. The Claimant's request that Defendants be ordered to pay for the surgery performed by Dr. Brenner is denied.
21. The Defendants had provided the Claimant with two South Carolina surgeons, Dr. Aspey and Dr. Fulton, who opined that the Claimant needed total shoulder replacement surgery.
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26. The Claimant has not met his burden of proof that his left hand is a causally related or affected body member.
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31. However, in the most recent opinion of Tracy Hill, PT (April 10, 2024) that addresses the issue of overuse, she states that there is a "possibility." (Claimant's APA p. 2.)
32. As the initial records do not indicate an injury to the Claimant's hand, none of the four orthopedic physicians address an issue of the left hand nor state there is a causally related injury of Claimant's left hand, and Tracy Hill's most recent opinion notes only a "possibility," the causal relationship of the left hand to this accident has not been established.
33. The Claimant has permanent partial disability of seventy (70%) percent to his left shoulder. (Record as a whole, including Transcript of Hearing and APAs.)
34. The hardware in Claimant's left shoulder is to be maintained, replaced, or repaired pursuant to the provisions of the Act. (Section 42-15-60)

35. As Dr. Brenner does not address whether or not the Claimant will need future medical treatment, no future medical treatment is awarded. (Section 42-15-60).

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. 42-15-60, "During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown." In accordance with this provision, Defendant's provided authorized medical care for Claimant's left shoulder injury. At first, Claimant did not want to proceed with the total shoulder replacement recommended by the authorized providers. Later, Claimant proceeded with a provider of his own choosing and proceeded on his own with Dr. Brenner. He did not proceed to a hearing to show good cause for a transfer of care prior to proceeding unilaterally with a provider of his own selection. There has been no demonstration that the care sought was emergent. Claimant's request that Defendants now be ordered to pay for the care he received from Dr. Brenner is denied.
2. Pursuant to S.C. Code Ann. 42-1-160, Claimant has failed to demonstrate by a preponderance of the evidence that he sustained a causally related injury to the left hand. As such there is no compensable injury to the left hand and he is not entitled to any benefit as to the left hand pursuant to the Act. Of note, Tracy Hill is a physical therapist

and not a medical doctor. Further, her opinion regarding causation on the left hand states it is 'possibly' from disuse due to the left shoulder pain. This does not rise to the standard of 'more likely than not' stated to a reasonable degree of medical certainty that the hand is causally related. None of the four orthopedic specialists/medical doctors who evaluated and treated Claimant in this claim made a statement causally relating an injury to the hand to a reasonable degree of medical certainty. The greater weight of the evidence, including Claimant's testimony that he did not report the left hand to his doctors, supports a finding that there is no causally related injury to the left hand.

3. Pursuant to S.C. Code Ann. 42-1-160, Claimant has sustained a causally related injury to the left shoulder only.
4. Pursuant to S.C. Code Ann. 42-9-30, Claimant has sustained a disability of seventy (70%) percent to his left shoulder.
5. Pursuant to S.C. Code Ann. 42-9-10; 42-9-20 and *Singleton v. Young Lumbar Co.*, 236 S.C. 454 (1960), Claimant is not permanently and totally disabled nor partially disabled such that he is entitled to an award based on wage loss. The preponderance of the evidence does not support an incapacity for gainful employment. This evidence includes his subsequent employment with Bo-Buck after this accident, the vocational evaluation from Harriet Fowler pre-dating the total shoulder replacement such that it does not reflect these treatment outcomes, no work restrictions being addressed by Dr. Brenner (who performed the total shoulder replacement surgery), testimony regarding employer, Schaeffler's, willingness to return Claimant to work, and Claimant's testimony regarding his current activities.

6. Pursuant to S.C. Code Ann. 42-15-60, Defendants will be responsible for the maintenance, repair, and replacement of the retained hardware in the left shoulder resulting from the total shoulder replacement surgery as detailed by Dr. Brenner in the surgical note.
7. Pursuant to S.C. Code Ann. 42-15-60, Claimant is not entitled to other causally related future medical care.

ORDER

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

IT IS HEREBY ORDERED that Claimant has reached MMI for the causally related injury to his left shoulder and is entitled to an award of permanency based on seventy percent (70%) disability to the left shoulder.

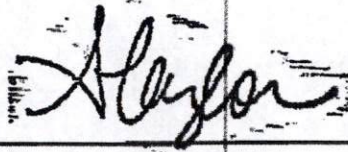
IT IS FURTHER ORDERED that Claimant is entitled to repair, maintenance, and replacement of the retained hardware in his left shoulder resulting from the total shoulder replacement surgery but no other future causally related medical care.

IT IS FURTHER ORDERED that there is no causally related injury to the left hand.

IT IS FURTHER ORDERED that Defendants are not responsible to pay for the medical treatment Claimant unilaterally obtained from Dr. Brenner surrounding the total shoulder replacement.

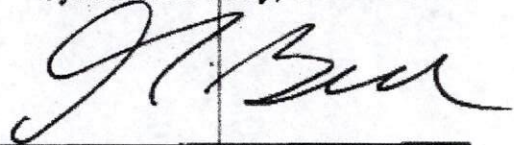
No hearing costs are assessed in this instance.

AND SO IT IS ORDERED.

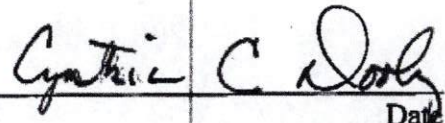


Aisha Taylor, Commissioner

Cynthia C. Dooley, Commissioner



T. Scott Beck, Commissioner



Date

Columbia, SC

Order Served via email:

Preston F. McDaniel McDaniel Law Firm preston@pfmcdlaw.com	Candace G. Hindersman Willson Jones Carter & Baxley cghindersman@wjcblaw.com
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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 June 5, 2026