

APPEAL NO. 92345

A contested case hearing was held on June 9, 1992, at (city), Texas, (hearing officer) presiding as hearing officer. She determined the respondent was entitled to select Dr. RMH as his third choice of doctor and ordered the appellant to accept him as the appellant's third choice of treating doctor. Appellant urges that the respondent has not complied with the requirements of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act) and the implementing rules. Appellant argues that the respondent has not proven his entitlement to further medical treatment. No response has been filed.

DECISION

Finding that the first of two tapes recording the contested case hearing was not in the file forwarded to the Appeals Panel for review on this request for review and not otherwise being found, we reverse and remand.

Article 8303-6.42 of the 1989 Act requires the Appeals Panel to consider the "record developed at the contested case hearing." *Also see* Texas Workers' Compensation Commission Appeal No. 92131 (Docket No. redacted) decided May 15, 1992; Texas Workers' Compensation Commission Appeal No. 92151 (Docket No. redacted) decided July 10, 1992. This Appeals Panel cannot make a decision on the merits without a record, so we necessarily remand for a suitable reconstruction of that portion of the hearing that is represented by the missing tape.

The case is reversed and remanded for an expedited proceeding to effect a complete record of the contested case hearing. A final decision in this is not rendered pending resolution of the matter on remand.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge