

## APPEAL NO. 92656

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). A contested case hearing was held in (city), Texas, on November 3, 1992, (hearing officer) presiding, to consider whether appellant (claimant) was injured in the course and scope of his employment on or about (date of injury) and, if so, whether he reported his injury in a timely manner. The hearing officer added issues concerning the correct date of claimant's injury if he was injured; and, if he did not timely report his injury, whether claimant had good cause for such failure, or whether his employer had actual knowledge of the injury.

The hearing officer signed a Decision and Order (decision) on November 10, 1992, which stated claimant's employer's workers' compensation insurance carrier as (Company) in the caption, in the statement of the case, and in factual finding number 3, whereas in the statement of jurisdiction and venue, the carrier was shown to be (Company). Accompanying a copy of the decision provided to the Appeals Panel is a statement which purports to correct clerical errors by changing the carrier's name to (carrier) in the decision's caption, statement of the case, and statement of jurisdiction and venue. This statement of clerical correction, citing Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §140.5(e), does not, however, purport to correct Finding of Fact No. 3 which finds the carrier to be (Company).

The hearing officer concluded that claimant was not injured in the course and scope of his employment on (month) 1, "1992," (month 6, 8, or (injury) year), , that he did not timely report his alleged injury, that he lacked good cause for his failure to timely report his injury, and that his employer did not have actual "notice" of the alleged injury. Claimant has timely requested our review of those conclusions. No carrier has filed a response.

### DECISION

Because a complete record of the contested case hearing is not available for our review, we reverse and remand.

Article 8308-6.42(a)(1) requires the Appeals panel to consider "the record developed at the contested case hearing." See Texas Workers' Compensation Commission Appeal No. 92153, decided May 29, 1992, and cases therein cited. The tape recording of the initial portion of the hearing, forwarded as the record of the proceedings below, was unintelligible, apparently due to defective recording. The tape recording becomes intelligible at the point in the hearing where the translator is sworn. While the unintelligible portion of the record may have consisted for the most part of the hearing officer's preliminary instructions, it is during that portion of the hearing that the disputed issues are most often discussed and clarified, that preliminary motions and objections are sometimes made by the parties, and that documentary evidence is sometimes introduced. While the intelligible portion of the record discloses a discussion of the disputed issues, we cannot know that no rulings were made by the hearing officer nor that no evidence was adduced during that portion of the hearing.

In remanding this case, we request that only that portion of the record which is unintelligible on the tape recording be reconstructed. It is necessary upon remand that the record be sufficiently constructed so that the Appeals Panel can review all the testimonial evidence, statements of counsel and rulings of the hearing officer. See Texas Workers' Compensation Commission Appeal No. 92404, decided September 21, 1992. The hearing officer should provide both claimant and carrier with a copy of the tapes we are returning. If an audio or extracting service can reconstruct the unintelligible portion of the tape so that the hearing officer can assure that a complete record of the proceedings is available, such reconstruction would satisfy this panel. See Texas Workers' Compensation Commission Appeal No. 91017, decided September 25, 1991.

The decision of the hearing officer is reversed and remanded for an expedited proceeding to reconstruct so much of the record of the proceedings below as are unintelligible on the tape recording. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitates the issuance of a new decision and order by the hearing officer, a party, including claimant, who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Article 8308-6.41. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge