

APPEAL NO. 92682

This appeal arises under the Texas Workers' Compensation Act (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1993). After a contested case hearing held on October 30, 1992 in (city), Texas, (hearing officer) held that the claimant did not suffer a compensable injury on or about (date of injury), and that the employer's workers' compensation insurance carrier was not liable for benefits under the 1989 Act.

Appellant (hereinafter claimant) objects to the finding of fact that the claimant did not injure his left wrist while driving over a speed bump on the premises of his employer while going to work. He also objects to conclusions of law stating that the claimant did not suffer a compensable injury in the course and scope of his employment on or about (date of injury), and that he is not entitled to any benefits under the 1989 Act. In essence, claimant argues that evidence adduced at the hearing proved otherwise. The respondent carrier contends that the evidence presented at the contested case hearing sufficiently supports the hearing officer's determination.

DECISION

Because a portion of the audio tape which recorded proceedings at the contested case hearing is blank, we reverse and remand for reconstruction of the record.

The 1989 Act requires the Appeals Panel to consider the record developed at the contested case hearing. Article 8308-6.42(a)(1); Texas Workers' Compensation Commission Appeal No. 92153, decided May 29, 1992. In this case, that portion of the hearing which was recorded beginning with the second audio tape was completely blank. This omission occurred while one of carrier's witnesses, (Mr. K), was testifying. It is thus necessary that this case be remanded for this part of the record to be reconstructed so that this panel can review all the testimonial evidence, statements and arguments of counsel, and rulings of the hearing officer.

In remanding this case, we instruct that only that portion of the record which is missing from the tape recording be reconstructed.

The decision of the hearing officer is reversed and remanded for an expedited proceeding to reconstruct that part of the record of the proceedings below as is missing. 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 the claimant, who wishes to appeal from such new decision must file a request for review no 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.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge