

APPEAL NO. 94161

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 18, 1994, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue to be resolved was: "What is the Claimant's impairment rating?" The hearing officer determined that the appellant, claimant herein, had reached maximum medical improvement (MMI) on June 8, 1993, with a 12% impairment rating (IR) pursuant to a designated doctor's assessment and that the designated doctor's opinion was not contrary to the great weight of the other medical evidence.

Claimant contends that the designated doctor should not have been selected as a designated doctor because the designated doctor had, on four previous occasions, examined claimant and prescribed medication. Claimant further objects to the designated doctor's 12% IR as being incorrect and contends that the treating doctor's 23% was correct. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

Because the record of the CCH is not available for our review, we reverse and remand.

The file presented for our review consists of the hearing officer's Decision and Order; claimant's handwritten appeal dated February 9, 1994; carrier's response to claimant's appeal dated February 18, 1994; file copies of the hearing officer's decision and ancillary papers; copies of two Appeals Panel decisions; Hearing Officer's Exhibits Nos. 1 and 2; Claimant's Exhibits Nos. 1 through 9; and Carrier's Exhibits Nos. 1 through 4. The Decision and Order of the hearing officer indicate a court reporter was not present; therefore, there is no transcript. No tapes of the proceedings were forwarded and inquiry by the Appeals Panel administrative personnel does not indicate whether tapes are available or where the tapes of the proceedings may be.

Section 410.203(a)(1) of the 1989 Act requires the Appeals Panel to consider "the record developed at the [CCH]." See Texas Workers' Compensation Commission Appeal No. 91017, decided September 25, 1991; Texas Workers' Compensation Commission Appeal No. 92131, decided May 15, 1992; Texas Workers' Compensation Commission Appeal No. 92153, decided May 29, 1992. In the absence of a record to review, it will either be necessary to locate the original tapes or reconstruct the record so that this panel can fully review the testimonial evidence, statements of the parties and rulings of the hearing officer.

We reverse and remand for lack of an appropriate record to review.

Thomas A. Knapp
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Alan C. Ernst
Appeals Judge