

APPEAL NO. 94251

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 7, 1994, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues presented for resolution were:

whether Claimant sustained an injury within the course and scope of his employment on (date of injury),

whether Claimant timely reported his alleged injury, and

whether Claimant has sustained any disability as a result of his alleged injury.

The hearing officer determined that the claimant sustained a compensable injury on (date of injury), that claimant timely reported the compensable injury and that claimant has had disability since August 5, 1992.

Appellant, carrier herein, contends that claimant did not suffer a compensable injury because the claimant's testimony was not credible and that claimant has not suffered disability, principally because he filed for unemployment benefits and the medical evidence does not substantiate any disability. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. Respondent, claimant herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

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

The hearing was tape recorded. There is no indication that a court reporter was at the hearing. The hearing officer's comments were barely audible, however, the claimant's testimony was completely inaudible. Section 410.203(a) of the 1989 Act 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; Texas Workers' Compensation Commission Appeal No. 92151, decided July 10, 1992. The hearing officer may be able to avoid having to recall the aforementioned witnesses for additional testimony if an audible tape recording of the testimony can be located or if the tapes being returned with this decision can be sufficiently enhanced. In any event, it is necessary upon remand that the record be reconstructed sufficiently so that this panel can fully review all of the testimonial evidence, statements of the parties and rulings of the hearing officer.

We reverse and remand for appropriate reconstruction of the record. A final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party 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 Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge