

APPEAL NO. 94320

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 9, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to consider three disputed issues, namely, whether the appellant (claimant) sustained a compensable injury on (date of injury), whether claimant timely reported his alleged injury or had good cause for failing to do so, and whether claimant had any disability as a result of his alleged injury. The hearing officer determined that the claimant failed to meet his burden of proof on the issues, apparently regarding as unreliable claimant's testimony and that of his witnesses, and decided the issues adversely to the claimant. Claimant's appeal is, in essence, a challenge to the sufficiency of the evidence. The response filed by the respondent (carrier) asserts the sufficiency of the evidence to support the hearing officer's factual findings and legal conclusions and seeks our affirmance.

DECISION

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

Section 410.203(a) of the 1989 Act provides that the Appeals Panel shall consider the record developed at the contested case hearing and the written request for appeal and response filed with the Appeals Panel. *And see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.2(a) (Rule 143.2(a)). *See also* Texas Workers' Compensation Commission Appeal No. 92153, decided May 29, 1992, and cases therein cited. Section 410.164(a) provides that the proceedings of a contested case hearing will be recorded electronically while Section 410.164(b) permits a party to request that the proceedings be recorded by a court reporter.

The hearing officer's decision does not reflect that the proceedings were recorded by a court reporter. The tape recorded testimony of the claimant is unintelligible due, apparently, to the location of the witness relative to the tape recorder microphone, or to the speed and articulation of the testimony, or to defective recording equipment, or to all of the above.

In remanding this case, we request that only such portions of the testimony of the claimant, other witnesses, and other speakers as are inaudible or unintelligible on the tape recorded record 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 inaudible or unintelligible portions of the tapes so that the hearing officer can assure that a complete record of the proceedings is available for appellate review, such reconstruction would satisfy this panel. *See* Texas Workers' Compensation Commission Appeal No. 91017, decided September 25, 1991.

Pending resolution of the remand, 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge