

## APPEAL NO. 990544

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 2, 1999. He (hearing officer) determined that on April 14, 1998, Dr. W certified that the appellant (claimant) reached maximum medical improvement (MMI) on April 14, 1998, with a one percent impairment rating (IR); that that was the first certification of MMI and IR; that the claimant received a copy of the first certification on April 28, 1998; that she did not dispute the first certification within 90 days of having received it; that Dr. W did not make a significant error or clear misdiagnosis in rendering the first certification; that the first certification of MMI and IR became final under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); and that the claimant reached MMI on April 14, 1998, with a one percent IR. The claimant appealed, contending that Dr. W made a significant error or misdiagnosed her, and requesting that the Appeals Panel reverse the decision of the hearing officer. A response from the respondent (carrier) has not been received.

### DECISION

Because the record of the proceedings, including the evidence considered, has not been received, the Appeals Panel has no record to review and reverses and remands for the reconstruction of the record or the forwarding of the record if it is located.

The Appeals Panel shall consider the record developed at the hearing, the written request for review, and the written response to the request for review. Section 410.203(a). The Appeals Panel cannot make a decision on the merits of an appeal and the response to the appeal without a complete record. Texas Workers' Compensation Commission Appeal No. 950327, decided April 19, 1995.

We reverse the decision and order of the hearing officer and remand for the reconstruction of the record or the forwarding of the record if it is located. 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.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge