

APPEAL NO. 990797

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 16, 1999. He (hearing officer) determined that the appellant's (claimant) compensable injury of _____, did not extend to her hip, right leg, and lower back and that the claimant did not have disability resulting from the _____, injury. The claimant appeals these determinations, asserting prejudicial error in the exclusion of evidence and that the decision is otherwise against the great weight and preponderance of the evidence. The appeals file contains no response from the respondent (carrier).

DECISION

Reversed and remanded.

The audiotape which purports to be the record of the proceedings below is blank on both sides. For this reason, we reverse and remand for reconstruction of the record developed at the CCH. See Section 410.203(a)(1). We further note that a document offered into evidence by the claimant Dr. P letter of June 26, 1998, to the attention of Ms. T during her cross-examination), but not admitted by the hearing officer is not part of the record. Should there be a subsequent appeal on remand, this document must be included with the record since its exclusion by the hearing officer from evidence is asserted as error. See Texas Workers' Compensation Commission Appeal No. 981042, decided June 25, 1998. In the exclusion of a medical record, attention should be paid to the requirement in Section 410.160(2) to exchange such documents to minimize the need for subpoenas.

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.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Dorian E. Ramirez
Appeals Judge