

APPEAL NO. 991424

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 June 1, 1999. The issues at the CCH were whether the appellant (claimant herein) was entitled to supplemental income benefits (SIBS) for the fifth and seventh compensable quarters. The hearing officer found that during the filing periods for these compensable quarters the claimant failed to make a good faith effort to seek employment commensurate with his ability to work and therefore concluded that the claimant was not entitled to SIBS for these compensable quarters. The claimant appeals arguing that he was unable to work during the filing periods in question and had been directed by his doctor not to work. The respondent (carrier herein) replies that the findings and the decision of the hearing officer were supported by the evidence.

DECISION

We reverse and remand as a complete record is not available for our review.

Section 410.203(a) of the 1989 Act provides that the Appeals Panel shall consider the record developed at the CCH and the written request for appeal and response thereto filed with the Appeals Panel. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.2(a) (Rule 143.2(a)); Texas Workers' Compensation Commission Appeal No. 92153, decided May 29, 1992, and cases cited therein. Section 410.164(a) provides that the proceedings of a CCH 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 reflects that the proceedings were recorded by a court reporter. However, despite repeated requests by the Appeals Panel, there is no transcript in the file and no audiotape in the appeal file. In remanding the case, we must be provided a record of all the testimony from the CCH.

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.

Gary L. Kilgore
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge