

APPEAL NO. 991606

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 8 and July 1, 1999. He (hearing officer) determined that the respondent (claimant) had disability as a result of a compensable inguinal hernia injury of _____, from November 4, 1998, and continuing. The appellant (carrier) appeals this determination, contending that it is contrary to the great weight and preponderance of the evidence. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Reversed and remanded for a suitable reconstruction of the record.

The appeals file contains one audiotape. The first side is devoted exclusively to proceedings on June 8, 1999, which resulted in a continuance. The second side contains only the final arguments of counsel given at the second session of the CCH. Toward the end of the proceedings recorded on side 2, the hearing officer commented that there was an omission in the recording, but that the only matters omitted from the tape dealt with the admission of a portion of the parties' exhibits not admitted at the first session. The parties agreed with this statement of the hearing officer. However, the decision and order reflects that the claimant testified and was the only witness. The claimant's counsel alluded to this testimony in his closing argument. Unfortunately, none of the claimant's testimony was recorded. We, therefore, reverse and remand the decision of the hearing officer for a reconstruction of the claimant's testimony. The reconstruction of the record may be by any means acceptable to the parties.

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:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge