

## APPEAL NO. 001811

Following a contested case hearing held on July 10, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the first certification of maximum medical improvement (MMI) and the assignment of a zero percent impairment rating (IR) by Dr. M on May 8, 1997, did become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) and that the appellant (claimant) had disability from March 1 through "approximately" March 13, 1997, the date of MMI, and did not have disability from April 1 through the date of the hearing. The claimant has appealed these determinations, asserting that the first assigned IR did not become final under Rule 130.5(e) because the respondent (carrier) failed to prove it mailed written notice of the IR to the claimant, because the carrier's written notice of the IR, if mailed, was in English only, and because the carrier is equitably estopped from relying on Rule 130.5(e) because it earlier denied coverage of the claim. The file does not contain a response from the carrier.

### DECISION

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

Section 410.203(a)(1) requires the Appeals Panel to consider the "record developed at the contested case hearing." See Texas Workers' Compensation Commission Appeal No. 92153, decided May 29, 1992. The hearing was tape-recorded and there is no indication that a court reporter was present. The record forwarded for review consists of three audiotapes together with the exhibits. On Tape 1, side A, the voices are unintelligible for about one-fourth of that side and after that point, the tape is blank. Side B of Tape 1 is also blank. It is necessary upon remand that the record be reconstructed sufficiently so that the Appeals Panel can review all of the testimonial evidence, statements of counsel, and rulings of the hearing officer. Although Tapes 2 and 3 appear to be satisfactorily recorded, based on a spot check, they should be carefully checked in their entirety on remand.

We reverse and remand for appropriate reconstruction of the record.

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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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge