

APPEAL NO. 002180

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 August 29, 2000. The issues at the CCH were whether the appellant/cross-respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fifth through eighth quarters, and whether she permanently lost entitlement to SIBs.

The hearing officer found entitlement for the seventh and eighth quarters but not for the fifth and sixth. She further found that entitlement was not permanently lost.

Both the claimant and the respondent/cross-appellant (self-insured) have appealed the quarters that were found against them.

DECISION

Remanded for a new hearing and record.

Regrettably, the tape that accompanied the record to the Appeals Panel was blank. A search was made, but was not fruitful, for any tape recording which may exist at the field office of the Texas Workers' Compensation Commission (Commission). Neither side provided a court reporter whose transcript could be used. We therefore have no record to consider.

In this case, we must remand for a new CCH rather than a mere reconstruction. The hearing officer who previously heard this case is no longer in the employment of the Commission and therefore the matter will have to be considered by another hearing officer when the new record is made. That hearing officer has the freedom to either find as the previous hearing officer did or not find as that hearing officer did. The CCH is limited, however, to the issues that were considered in the previous hearing.

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 Commission's Division of Hearings, pursuant to Section 410.202. See

Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge