

## APPEAL NO. 010405

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 6, 2001. With respect to the single issue before him, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned to the appellant (claimant) became final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). In his appeal, the claimant essentially argues that the hearing officer's determination that he did not timely dispute the first certification of MMI and IR is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

### DECISION

We reverse and remand.

The audiotape of the hearing contains all of the claimant's case, including his testimony. The hearing officer's decision reflects that Mr. G, the carrier's adjuster, testified at the hearing. At the point when the carrier called Mr. G as a witness, the hearing officer went off the record to contact Mr. G by telephone. Unfortunately, thereafter, the audiotape is blank. It does not contain Mr. G's testimony or the closing arguments of the parties. Accordingly, we reverse the hearing officer's decision and order and remand for reconstruction of the portion of the record that is missing, specifically Mr. G's testimony and the closing arguments.

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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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge