

APPEAL NO. 011139
FILED JULY 05, 2001

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 May 9, 2001. The hearing officer determined that the first certification of maximum medical improvement and impairment rating assigned by Dr. B on June 17, 1999, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The appellant (claimant) appealed the determination on sufficiency grounds and asserts that the hearing officer erred in relying on evidence that was introduced after the close of the respondent's (carrier) case. No response to the appeal was filed.

DECISION

Because a complete record of the CCH 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 hearing. See Texas Workers' Compensation Commission Appeal No. 93809, decided October 25, 1993. Section 410.164 provides for an electronic recording of the hearing and the use of a court reporter. When a court reporter is used, a copy of the court reporter's audiotape, or transcript, if produced, shall be furnished to the Texas Workers' Compensation Commission (Commission) at no charge. Rule 142.14(c).

The Decision and Order of the hearing officer indicates that a court reporter was present at the hearing. However, no transcript of the proceeding, prepared by a court reporter, has been provided. Additionally, the audiotape recording of the hearing is largely inaudible, making it virtually impossible for the Appeals Panel to perform a full and proper review of the record for purposes of addressing the claimant's sufficiency of the evidence contentions. We, therefore, remand this case for reconstruction of the record. The hearing officer may be able to avoid having to recall the witnesses for additional testimony if the court reporter's audio or written recording of the proceeding can be located or the recording being returned with this decision can be sufficiently enhanced or transcribed.

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

We reverse the hearing officer's decision and order and remand for reconstruction of the record.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge