

APPEAL NO. 950137

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing was held in (city), Texas, on December 14, 1994, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) did not sustain an injury in the course and scope of her employment and did not sustain disability. The claimant appeals urging that the great weight of the evidence is contrary to the determinations of the hearing officer. The respondent (carrier) argues that there is sufficient evidence supporting the hearing officer's decision and ask that the decision be affirmed.

DECISION

The case is reversed and remanded for reconstruction of the record.

The contested case hearing file forwarded with this case contains two tapes with notation that the hearing covered three sides of the tapes. Approximately half way through side number two, a witness is called to the stand and a comment made by the hearing officer that she would cut off the tape while the witness was being brought in. At that point the tape goes blank and no further recording is made on the rest of that tape or on either side of tape two, although the decision reflects additional witnesses were called and testified. Apparently there was some malfunctioning of the tape recorder. In any event, a complete record is not available for our review and a remand for reconstruction of that portion of the record of the hearing is necessary. Section 410.203 provides that the Appeals Panel shall consider the record developed at the contested case hearing. Texas Workers' Compensation Commission Appeal No. 94389, decided May 16, 1994; Texas Workers' Compensation Commission Appeal No. 94221, decided April 6, 1994. The decision is reversed and the case remanded for 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.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge