

APPEAL NO. 950205

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 January 5, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were whether a subsequent injury was the sole cause of the claimant's current condition and disability. The hearing officer determined that the subsequent injury was not the sole cause of the claimant's current condition and found that the claimant had disability from June 7, 1994 to October 6, 1994. The carrier's appeal alleges error in the hearing officer's refusal to admit certain witness statements into evidence and challenges the sufficiency of the evidence to support the findings of the hearing officer. The claimant files no response.

DECISION

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

Section 410.203(a) of the 1989 Act provides that the Appeals Panel shall consider the record developed at the CCH and the written request for appeal and any response thereto filed with the Appeals Panel. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.2(a) (Rule 143.2(a)); Texas Workers' Compensation Commission Appeal No. 92153, decided May 29, 1992, and cases cited therein. Section 410.164(a) provides that the proceedings of a CCH be recorded electronically while Section 410.164(b) permits a party to request that the proceedings be recorded by a court reporter.

The hearing officer's decision does not reflect that the proceedings were recorded by a court reporter. The second side (Side B) of tape one appears to be blank. Examination of the remaining tapes and the decision of the hearing officer shows that this tape should include the entire examination of the claimant and part of the examination of the carrier's witness as well as a portion of the closing arguments. The reason for this recording gap is not apparent.

In remanding this case, we request that only such portions of the testimony of the claimant, other witnesses, and other speakers as are not recorded be reconstructed. It is necessary upon remand that the record be sufficiently reconstructed so the Appeals Panel can review all the testimonial evidence, statements of counsel, and rulings of the hearing officer. See Texas Workers' Compensation Commission Appeal No. 92404, decided September 21, 1992. The hearing officer should provide both claimant and carrier with a copy of the tapes we are returning. If an audio or extracting service can reconstruct the inaudible portions of the tapes so that the hearing officer can assure that a complete record of the proceedings is available for appellate review, such reconstruction would satisfy this panel. See Texas Workers' Compensation Commission Appeal No. 91017, decided September 25, 1991.

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.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge