

## APPEAL NO. 950327

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 November 2, 1994, with the record closing on November 17, 1994, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) sustained a compensable injury in the form of an occupational disease, that she knew or should have known that her disease may be related to her work on (date of injury 2), and that the appellant (carrier) did not timely contest the compensability of the injury on or before the 60th day after (date), the date the carrier was notified of the injury. The carrier appeals urging that the employer covered by the carrier was not the employer on the date the claimant became aware her injury was work related, (date of injury 1). Claimant agrees with the decision of the hearing officer.

### DECISION

Because a record of the proceeding and the evidence considered have not been received after repeated requests, and the Appeals Panel has no record and file to review, we reverse and remand.

Repeated requests have been made for the contested case hearing (CCH) proceedings in this case, however none have been received indicating they have been lost or are otherwise not available. Consequently, there is no evidence, testimony or other matters to review on this appeal. Section 410.203 requires the Appeals Panel consider the "record developed at the contested case hearing." The Appeals Panel cannot make a decision in this case on the merits of the appeal and response without a complete record of the evidence presented. Texas Workers' Compensation Commission Appeal No. 94389, decided May 16, 1994; Texas Workers' Compensation Commission Appeal No. 92131, decided May 15, 1992.

The decision and order of the hearing officer are reversed and the case is remanded for reconstruction of the record or the forwarding of the CCH record and file if it can be located. 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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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge