

## APPEAL NO. 950345

This appeal arises under 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 29, 1994, (hearing officer) presiding as hearing officer, to determine whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by (Dr. A) became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)), whether respondent (claimant) has reached MMI and, if so, on what date, and claimant's IR if she has reached MMI. The hearing officer found, among other things, that claimant sustained a compensable injury to her left knee on (date of injury), that claimant's treating doctor certified that she reached MMI on February 1, 1994, with an IR of 14%, that claimant did not contest the certification within 90 days, that some eight months later claimant had surgery on the knee, and that the surgery resulted in the diagnosis of "a new condition" which relieved claimant of the finality of the MMI date and 14% which had not been timely disputed. The hearing officer concluded that the first certification of MMI and IR did not become final "due to a new medical condition," that claimant reached statutory MMI on August 28, 1994, and that her IR "has to be redetermined." The appellant (carrier) challenges the finding and conclusions to the effect that claimant was diagnosed with a new condition which operated to remove the 14% IR from the finality provisions of Rule 130.5(e). Claimant seeks affirmance.

### 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 proceedings in this case; however, none have been received indicating they have been lost or are otherwise unavailable. Consequently, there is no evidence, testimony or other matter to review on this appeal. Section 410.203 requires the Appeals Panel to 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 hearing record and file it if 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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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Joe Sebesta  
Appeals Judge