

APPEAL NO. 950449

This Appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 6, 1995, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues were:

1. Did the carrier waive the right to contest the compensability of the claimed injury by not contesting compensability within 60 days of being notified of the injury?
2. Did the claimant report an injury to the Employer on or before the 30th day after the injury and if not, does good cause exist for failure to report the injury timely?
3. Did the claimant sustain a compensable injury on (date of injury)?
4. Did the claimant have disability resulting from the injury sustained on (date of injury), and if so, for what periods?

The hearing officer determined that claimant had not suffered a compensable injury on or about (date of injury), that claimant had not reported her alleged work-related injury to the employer within 30 days and did not have good cause for failure to do so, that claimant did not have disability and that carrier had timely filed its dispute of compensability.

Appellant (claimant) appealed alleging error by the hearing officer in not admitting a medical report, and error in the hearing officer's determination on compensability of the injury, notice and disability. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. Respondent (carrier) responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

Because a complete record of the CCH 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 reflects a court reporter was present, however the file forwarded for review did not contain a transcript. Extensive efforts by Appeals Panel Administrative personnel in contacts with the parties and the court reporting firm failed to produce the transcript. Two tapes marked "1 of 2" and "2 of 2" were forwarded with the file. On side one of tape one the hearing officer proceeds with the preliminary matters including the introduction of both claimant and carrier exhibits. Claimant is then called, sworn and is testifying on direct examination at the end of side one, tape one. Side two of tape one is blank. Tape two, sides one and two are also blank. Examination of the hearing officer's decision indicates that the missing evidence appears to include the remainder of claimant's direct examination, cross examination of claimant, carrier's witnesses (apparently two), the hearing officer's rulings on evidentiary matters and the parties' closing statements. The reason for the blank tapes is not apparent.

In remanding this case, we request that 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 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 the original transcript can be obtained or if the court reporter has an audible tape recording which would assure the hearing officer and the Appeals Panel that a complete record of the proceedings is available for appellate review, such record would satisfy this remand. 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 division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Joe Sebesta  
Appeals Judge