APPEAL NO. 991203

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 17, 1999. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury; that the date of injury is _____; and that the appellant's (carrier) contest of compensability was sufficiently specific to place the claimant on notice that it was contesting the compensability of the _____, injury. In its appeal, the carrier argues that the hearing officer's injury and date-of-injury determinations are against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance. The claimant did not appeal the hearing officer's determination that the carrier's contest of compensability was sufficiently specific and that determination has, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant testified that on _____, he was using a four to five foot pole, which resembled a baseball bat, to get a part out of the machine he was operating. He stated that as the part was falling, he was not able to pull the pole out of the way and the force of the falling part knocked the pole backwards, causing him to strike his mouth with his right hand. The claimant testified that on the morning following this incident, his lip was sore and he noticed that his bridge was loose as he tried to eat his breakfast. He stated that he reported his injury to the employer's nurse on the Monday, following his injury on Thursday; that the nurse advised him to pursue a claim with his group dental policy because workers' compensation would not pay for it; that he attempted to have his group policy pay for the dental work but when that company would not pay, he insisted that a workers' compensation claim be filed; that following the period when he attempted to have his group dental carrier pay, he mistakenly reported that his injury had occurred on (claimant's alleged date of injury), rather than _____; and that after he had a conversation with his supervisor, his memory was refreshed that the incident at work occurred on _____. The claimant introduced two handwritten statements from Mr. H, who witnessed the incident. Mr. H stated that the claimant was using a tool to get a heavy part out of a machine and that the claimant did not get the tool out of the way fast enough, causing it to come back and strike the claimant in the mouth and chest area.

Dr. B, the claimant's treating dentist, testified that the claimant had an appointment on August 18, 1997, at which time the claimant reported that he had been involved in an accident at work and that his bridge was loose. Dr. B testified that his examination of the claimant revealed that a tooth that supported the bridge was fractured and that the bridge itself had, therefore, become loose. Dr. B stated that the claimant told him that he had been hit in the mouth in an accident at work and that thereafter his bridge became loose. Dr. B opined that within reasonable medical probability the blow to the mouth at work caused the claimant's tooth to fracture and his bridge to become loose. Dr. B explained

that his examination of the claimant revealed a fractured tooth and a loose bridge, that the claimant told him he had been hit in the mouth in an accident, and that "it all made sense to me." On cross-examination, Dr. B acknowledged that an October 14, 1996, chart notes indicates that the claimant called and talked to someone on Dr. B's staff about wanting a new bridge, but that the records do not reflect why the claimant made that request. In addition, Dr. B noted that the claimant did not follow up on that request. Dr. B opined that the fractured tooth will have to be repaired and the bridge will also have to be replaced because the broken tooth can no longer serve as the abutment for the bridge.

The carrier introduced two reports from Dr. P, a dentist that conducted a records review on its behalf. In his March 24, 1998, report, Dr. P stated "[t]he maxillary anterior bridge was probably in its failing stage at the time of injury; however, there is no documentation of this. The injury may have 'finished off' the bridge, and damaged the bridge beyond repair." In a supplemental report of January 7, 1999, Dr. P concluded:

> The x-ray and office records further confirm my opinion that the maxillary bridge was failing two years before the incident, and in fact, had already failed beyond repair prior to the incident. There is no documentation that the incident caused the demise of the anterior bridge. There is no causal relationship consistent with the maxillary trauma and dental problems and the incident of (claimant's alleged date of injury).

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the evidence and decides what weight to give to the evidence. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. Generally, injury may be proven by the testimony of the claimant alone, if it is believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, the testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Ins. Co. v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The carrier contends that the hearing officer's injury and date-of-injury determinations are against the great weight of the evidence. In so arguing, the carrier maintains that the claimant's testimony was not credible. It points to alleged inconsistencies in his testimony at the hearing and in his prior recorded statement. Specifically, it notes that the claimant maintained in his statement that he had not been hit

by the pole; however, he testified at the hearing that the pole hit his chest but did not cause an injury. It further noted that Mr. G stated that the pole hit the claimant in the mouth and the chest and that Dr. B's records likewise reflect that the pole hit the claimant's mouth. The carrier also argues that the 1996 chart note that the claimant "wants" a new bridge demonstrates that his dental problems were "preexisting." Finally, the carrier appears to assert that the claimant's initial confusion over the date of injury reveals that no such incident took place. The carrier made the arguments it makes on appeal to the hearing officer. As the fact finder, it was solely her responsibility to determine the significance, if any, of those factors in determining whether the claimant had satisfied his burden of proving an injury and the date thereof. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant and she was acting within her province as the fact finder in so doing. Our review of the record does not demonstrate that the challenged determinations are so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the hearing officer's decision on appeal. Cain; Pool.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge