APPEAL NO. 002884

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on October 26, 2000, the hearing officer resolved the disputed issues by concluding that the _____, claimed injury arose out of an act of God, thus relieving the respondent (self-insured) of liability for compensation; that the appellant (claimant) did not sustain a compensable injury; and that the claimant did not have disability. The claimant appeals, asserting that the evidence established that her injury, which occurred while driving home from work in her own car, fell within the exceptions to the "going to and coming from" work rule stated in Section 401.011(12)(A)(ii) and (iii). The claimant also appears to challenge, at least indirectly, the hearing officer's determination that the self-insured is relieved of liability for compensation because the injury arose out of an act of God (Section 406.032(1)(E)), contending that her work as a driver training instructor for the self-insured on the date of the accident exposed her to a greater risk of injury from the act of God (a tornado) than ordinarily applies to the public. The self-insured urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The essential facts were not in dispute. The claimant testified that during the afternoon of _____, while working as a drivers' education teacher, the weather conditions deteriorated and strong winds were blowing, making it difficult for her students to maintain control of the steering wheel of the self-insured's vehicle she was using to instruct them, and that she decided to end the lesson early. She said the self-insured's policy required her to return the drivers' education vehicle back to the athletic field where it was kept and not drive it home so she did so and got into her own car, which she had driven there from her house, and started her drive home. The claimant further stated that while driving home, she encountered a tornado; that debris flew through the air and struck her car; that a large sheet of glass came through the back window, striking the back of her neck, cutting her arm, and lodging a small piece of glass in her left eye; that she was terrified and sought refuge under a bridge; and that she eventually completed the drive to her house. She stated that she returned to work on May 17, 2000, after obtaining treatment for her injuries, and that she continued to receive her pay because she used sick leave.

At the hearing the claimant contended that notwithstanding the provisions of the "coming and going" rule in Section 401.011(12)(A) she was nonetheless still in the course and scope of employment at the time she was injured because after returning the self-insured's vehicle in accordance with its policy, she was entitled to get to a safe place, e.g. her home, in her own vehicle before she could be considered to no longer be in the course and scope of her employment and that she was exposed to a greater risk than the general public at the time of her injury because she was required to leave the self-insured's vehicle at the field. On appeal she further contends that her situation fell within either of the

exceptions to the "coming and going" rule found in Section 401.011(12)(A)(ii) and (iii), namely, that the means of transportation were under the control of the self-insured and that she was directed in her employment to proceed from one place to another place. The self-insured contended that not only was the claimant simply driving home from work at the time she was injured, and thus not in the course and scope of employment under the "coming and going" rule, but, further, that the self-insured is not liable for compensation under Section 406.032(1)(E) because the claimant's injury arose out of an act of God and her employment did not expose her to a risk of injury greater than the risk to the general public.

The hearing officer found that on _____, the claimant was not at a greater risk of harm from the tornado than was the general public in the vicinity of the storm and that she was not furthering the affairs of the self-insured on that date while driving her personal vehicle home.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge