

decision dated September 30, 2013, an OWCP hearing representative affirmed the June 13, 2013 decision.²

The Board has duly considered the matter and finds that this case is not in posture for decision. Upon review of the case record submitted by OWCP, the Board finds that the record before it is incomplete because the DVD covering appellant's work area from 10:00 a.m. to 12:30 p.m. on September 18, 2012, that was furnished to OWCP by the employing establishment is not readable.³ The burden is on OWCP to rescind acceptance of a claim.⁴ In light of OWCP's reliance on the surveillance DVD as evidence to rescind acceptance of this claim, the Board finds this case is not in posture for decision as the record before the Board is incomplete and would not permit an informed adjudication of the case by the Board. The case must therefore be remanded to OWCP to furnish a readable DVD⁵ and for further reconstruction and assemblage deemed necessary, to be followed by an appropriate *de novo* decision.⁶

² OWCP's hearing representative also affirmed a March 18, 2013 decision denying three recurrence claims. As resolution of the claimed recurrences rests on resolution of whether OWCP met its burden of proof to rescind acceptance of appellant's claim, it would be premature for the Board to address the issue at this time.

³ The Board's technical staff examined the DVD found it to be encrypted and unreadable.

⁴ Section 8128 of Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128. The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision. The power to annul an award, however, is not an arbitrary one and an award for compensation can only be set aside in the manner provided by the compensation statute. OWCP's burden of justifying termination or modification of compensation holds true where OWCP later decides that it has erroneously accepted a claim for compensation. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of its rationale for rescission. *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁵ The Board's technical staff suggests that the DVD be in AVI or MPEG format.

⁶ On November 13, 2013 OWCP found that an overpayment of compensation in the amount of \$3,904.21 had been created because the acceptance of appellant's claimed injury was rescinded. Appellant did not file an appeal from the November 13, 2013 decision with the Board.

IT IS HEREBY ORDERED THAT the September 30, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: July 10, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board