

the date of injury. The DVD forwarded to the Board with the case record was not readable.² The Board found that, in light of OWCP's reliance on the surveillance DVD as evidence to rescind acceptance of the claim,³ the case was not in posture for decision as the record before the Board was incomplete. The Board remanded the case to OWCP to furnish a readable DVD and for further reconstruction and assemblage deemed necessary, to be followed by an appropriate *de novo* decision.⁴

Following remand, on August 13, 2014 OWCP asked the employing establishment to provide a readable DVD. In an August 21, 2014 decision, it rescinded acceptance of appellant's claim. Appellant, through counsel, timely requested a hearing. On March 9 and 17, 2015 OWCP telephoned the employing establishment requesting that it forward a readable copy of the DVD. A hearing was held on March 17, 2015. OWCP indicated that it had received a readable DVD on March 31, 2015. On June 3, 2015 an OWCP hearing representative affirmed the August 21, 2014 decision.

The Board again finds the case not in posture for decision because the record submitted to the Board is again incomplete. The DVD provided to the Board is not readable. It was again examined by the Board's technical staff who found it to be unreadable. The Board notes that documentation in the case record accompanying the DVD indicates that the evidence was received on March 19, 2013. As noted above, a readable DVD was provided to OWCP in March 2015. It is therefore unclear if the DVD in the case record before the Board at this time is the original DVD forwarded to OWCP in 2013 or a second DVD forwarded in 2015 and found readable by OWCP.

In light of OWCP's reliance on the surveillance DVD as evidence to rescind acceptance of this claim,⁵ the Board finds this case is not in posture for decision. The Board, therefore, will again remand the case to OWCP to furnish a readable DVD⁶ and for further reconstruction and assemblage deemed necessary, to be followed by an appropriate *de novo* decision.

² The Board's technical staff reviewed the DVD and found it to be encrypted and unreadable.

³ *Supra* note 1.

⁴ Docket No. 14-244 (issued July 10, 2014).

⁵ *Supra* note 1.

⁶ Based on advice from of technical staff, the Board suggests that the DVD be in AVI or MPEG format.

IT IS HEREBY ORDERED THAT the June 3, 2015 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: January 20, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board