



This case has previously been before the Board. In a July 10, 2014 order, the Board found the case not in posture for decision because the record submitted included a DVD purported to cover appellant's work area from 10:00 a.m. to 12:30 p.m. on September 18, 2012, the date of injury. The DVD forwarded to the Board with the case record was not readable.<sup>3</sup> The Board found that, in light of OWCP's reliance on the surveillance DVD as evidence to rescind acceptance of the claim,<sup>4</sup> 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.<sup>5</sup>

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 In an August 21, 2014 decision, it rescinded acceptance of appellant's claim.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 with OWCP's Branch of Hearings and Review. A hearing was held on March 17, 2015. On June 3, 2015, an OWCP hearing representative affirmed the August 21, 2014 decision, and appellant thereafter appealed to the Board. By order dated January 20, 2016, the Board again found the case not in posture for decision and remanded the case to OWCP because the DVD provided was not readable. The Board noted that the DVD was examined by the Board's technical staff who found it to be unreadable. The Board also indicated that it appeared that OWCP had received two DVDs, one in 2013 and one in 2015, and it was unclear which had been forwarded to the Board. Upon remand OWCP was to obtain a readable DVD, to be followed by an appropriate *de novo* decision.<sup>6</sup>

Following remand, on March 14, 2016 OWCP asked the employing establishment to forward the surveillance DVD. In a July 8, 2016 decision, OWCP rescinded acceptance of appellant's claim. OWCP noted that it had reviewed a clear copy of a surveillance DVD covering 10:00 a.m. to 12:30 p.m. on September 18, 2012 which did not demonstrate the truthfulness of appellant's claim and did not support that an injury occurred as claimed. Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review, that was held on March 15, 2017. On June 20, 2017 the employing establishment forwarded another surveillance DVD to OWCP. The transmittal documents included a photograph of the DVD that was forwarded which identified it as a Maxell DVD that had appellant's name and OWCP file number affixed. By decision dated September 5, 2017, an OWCP hearing representative affirmed the July 8, 2016 decision. He noted his review of a surveillance DVD, indicating that it cast significant doubt that appellant experienced a work-related injury at the time, place, and in the manner alleged, and that the medical evidence submitted was insufficient to establish a medical condition caused by the claimed September 18, 2012 injury.

The Board again finds the case not in posture for decision because the record submitted to the Board continues to be incomplete. The DVD provided to the Board was examined by the Board's technical staff who found it to be unreadable. The Board notes that the DVD furnished with appellant's case record is a TDK DVD, and not a Maxell DVD, as was identified by the employing establishment with its June 20, 2017 transmittal. The Board's technical staff indicated that the TDK DVD appeared to contain only an application file to be used to view content. There

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<sup>3</sup> The Board's technical staff reviewed the DVD and found it to be encrypted and unreadable.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> Docket No. 14-244 (issued July 10, 2014).

<sup>6</sup> Docket No. 15-1863 (issued January 20, 2016).

was no content found on the DVD. In light of OWCP's reliance on the surveillance DVD as evidence to rescind acceptance of this claim,<sup>7</sup> 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 DVD. After securing a readable DVD and for further reconstruction and assemblage deemed necessary, OWCP shall issue an appropriate *de novo* decision.

**IT IS HEREBY ORDERED THAT** the September 5, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 11, 2018  
Washington, DC

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

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

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

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<sup>7</sup> *Supra* note 1.