

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**DARNELLA SCOTT STREET, *Applicant***

**vs.**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT;  
permissibly self-insured, adjusted by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ7390255  
Oakland District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**JANUARY 3, 2023**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**ELECTRONIC WAVEFORM LAB  
CARMENITA & ASSOCIATES  
LAUGHLIN, FALBO, LEVY & MORESI**

**PAG/es**

I certify that I affixed the official seal of  
the Workers' Compensation Appeals  
Board to this original decision on this date.  
CS

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**I. INTRODUCTION**

Date of Injury: January 19, 2010

Party of Body Injured: left knee

Petitioner: Defendant Bay Area Rapid Transit District

Timeliness: The petition, filed on November 1, 2022 is timely

Verification: The petition is verified

Petitioner's Contention: Petitioner/Defendant Bay Area Rapid Transit District (or "BART") permissibly self-insured and administered by Athens Administrators contends that lien claimant Electronic Waveform Labs, Inc. (or "EWL") has not met its burden of proof to show that the H-Wave stimulator unit was reasonably required to cure or relieve applicant Darnella Scott Street of the effects of her knee injury and that defendant is liable for costs of the H-Wave unit and accessories.

**II. FACTS**

At issue is the payment of bills for lien claimant EWL's H-Wave unit which was provided to applicant subsequent to left knee surgery and during the course of physical therapy.

Petitioner/defendant BART accurately summarizes the relevant facts as follows:

Applicant Darnella Street sustained an injury to the left knee on January 19, 2010 while she was employed with defendant San Francisco Bay Area Rapid Transit District, adjusted by Athens Administrators. (Minutes of Hearing of October 11, 2022, hereinafter "Minutes of Hearing," at page 2, Stipulations 1 and 2.) Applicant was represented. Defendant provided all treatment and the treating physician was Dr. Thomas Peatman. (Id., at 2, Stipulation 4.) Applicant settled her case via Compromise and Release on or about January 18, 2019. (Id., at 2, Stipulations 5.) Neither applicant nor her attorney participated in the lien trial on October 11, 2022.

While under the care of Dr. Peatman applicant underwent total knee replacement surgery on February 3, 2015. (Ex. 16.) After surgery, a request for a 30-day trial of an H-Wave machine

was provided to Dr. Peatman by lien claimant Electronic Waveform Labs (hereinafter “EWL” or “lien claimant”) and submitted to defendant on the EWL provided form dated March 29, 2013. (Ex. 1.)

Physical therapy was provided to applicant across 13 sessions, all approved by Utilization Review. (Ex. 16.) Physical therapy notes were provided for all sessions.

The orthopedic AME in this matter was Dr. John Warbritton. Dr. Warbritton issued a report on October 14, 2013. In this report Dr. Warbritton provided his opinion on the H-Wave machine and its medical necessity as it related to applicant. (Judicial notice was taken of the AME report dated October 14, 2013 and filed on December 20, 2017.) The AME provided an opinion on the H-Wave machine and its medical necessity as it relates to applicant. (Dr. Warbritton’s AME report dated October 14, 2013 at 16.) Defendant contends that the AME’s determination was that the machine was not necessary or required in applicant’s case. To the contrary, the Findings and Order dated October 14, 2022 is based on the AME’s recommendations which first endorses use of an electrical nerve stimulator and then recommends inferential stimulation unit. A physical therapy report dated March 26, 2013 states that applicant has tried a TENS Unit but “feels more relief with an H-Wave.” (Ex. 16 at 57.) Thereafter, on March 29, 2013, Dr. Peatman signs a 30-day Request for Authorization, one page. (Ex. 1.) On this form, boxes are checked to indicate that physical therapy, medications, and a trial of a TENS unit has occurred but applicant still has pain and “do not substitute” another device for the H-wave. (Ex. 1.) The request of the H-wave occurred after several weeks of physical therapy and after use of a TENS unit. Subsequently, Exhibit 3 is a form dated May 30, 2013 whereby Dr. Peatman endorses purchase of the H-Wave machine. (Ex. 3.) Defendant contests that the PT report and the check box forms signed by Dr. Peatman are not substantial medical evidence to meet lien claimant’s burden of proof.

Lien claimant EWL did not file an Answer.

### **III. DISCUSSION**

For a determination by the WCAB to be upheld, the determination must be made based on substantial evidence. (*LeVesque v. WCAB* (1970) 1 Cal. 3d 627, 637). For medical reporting to constitute substantial medical evidence, the reporting may not rely on erroneous reporting, rely on reports that are no longer germane, or rely on an inadequate medical history or evaluation. (*McCoy v. I.A.C* (1966) 64 Cal. 2d 82, 92; *Jones v. WCAB* (1968) 68 Cal. 2d 476, 480; *West v. I.A.C.*

(1947) 79 Cal. App. 2d 711, 716). Additionally, a lien claimant has a burden of proof regarding the reasonableness and necessity of the treatment provided (*Morales v. Quake City*, 2019 Cal. Wrk. Comp. P.D. LEXIS 58.)

In the instant matter, physical therapy was authorized by defendant and applicant was seen or evaluated by Dr. Peatman on at least seven occasions and by the Physical Therapy Provider at least 13 times (Exhibit 16). Defendant contends that despite these seven visits plus thirteen therapy sessions, there are only two mentions of an H-Wave machine as part of applicant's treatment, a physical therapy note dated March 26, 2013, Exhibit 16 at page 57, and in the AME report of October 14, 2013 at page 16. Defendant contends that Dr. Peatman himself does not mention use of or effects from the H-Wave machine except in submission of the two pre-printed forms provided by EWL for the H-wave machine. (Ex. 1 and Ex. 3.) Defendant contends that there is not substantial medical evidence to support use of the H-Wave unit.

A TENS unit is a transcutaneous electrical nerve stimulation device that delivers small electrical impulses through electrodes to treat pain. (AME report at p. 16.) The H-Wave unit is a "patented wave form" inferential stimulation unit. (Id.) The physical therapy report dated March 26, 2013 by Matthew J. Silva is a handwritten report. It indicates applicant has tried a TENS Unit but "feels more relief with an H-Wave." (Ex. 16 at 57.) Defendant contests this interpretation, noting that the actual handwritten notes read: "Pt reports trying TENS at home + feels more relief (indeterminate character) H-wave." (Id.) The indeterminate character is the letter c with a dash above it, which is a common shorthand symbol in medical charts for the word "with." Therefore, when full words are substituted for shorthand notations, the chart states "patient reports trying a TENS at home and feels more relief with H-wave." (Full words in italics are substituted for shorthand.) Subsequently, on March 29, 2013, Dr. Peatman affirms that applicant has had physical therapy, medication, and a trial of the TENS unit, and recommends a trial of the H-Wave unit. (Ex. 1.) Although Exhibit 1 entitled "Primary Treating Physician's Progress Report Addendum" may be a pre-printed form, it meets the requirements for a DWC Form PR-2 as it indicates subjective complaints, a diagnosis of for the left knee with an ICD-9 number, and changes in the treatment plan, namely that applicant has tried physical therapy and medication and the treating physician now recommends a trial of the H-Wave. Furthermore, Dr. Peatman has signed under the penalty of perjury and the report is dated.

Similarly, on May 30, 2013, the “Prescription and Request for Authorization of Physical Modality Durable Medical Equipment: H-Wave Homecare System-Continued Use” contains all the information required on the DWC Form PR-2. (Ex. 3.)

Defendant contends that these reports are rebutted by the AME. At page 16 of the October 14, 2013 report, AME Dr. Warbritton offers options. The AME recommends use of a knee brace and opines: “The use of a transcutaneous electrical nerve stimulation (TENS) unit is also reasonable and appropriate.” (AME report of October 14, 2013 at p. 16.) Then, if “pursuant to Ms. Street’s diary” the TENS unit does not provide benefit, then “I would recommend that the patient be provided with an interferential stimulation unit.” (Id.) The AME states that applicant will need to “complete a patient diary for at least thirty days” and “if the transcutaneous electrical nerve stimulation unit is ineffective but the interferential stimulation unit is effective, then this should be provided on an industrial basis.” (Id.) This is in accord with the evidence that applicant tried the TENS unit and also the H-Wave Unit and found greater relief with the H-Wave.

The AME then addresses the H-Wave by stating he has reviewed their evidence closely and “is not particular persuaded that the H-Wave unit is, in fact, superior to an appropriately utilized interferential stimulation unit” but “both the interferential stimulation unit and the H-wave unit are superior to the transcutaneous electrical nerve stimulation (TENS) unit.” (Id.) Again, this is in accord with the evidence that applicant tried the TENS unit and the H-Wave Unit and found greater relief with the H-Wave. Though the AME does not endorse a purchase of the H-wave as the exclusive type of interferential stimulation device, he does endorse use of any interferential stimulation device as “superior” to a TENS unit. H-wave is the only inferential stimulation device that was available to applicant. Thus, it was medical appropriate.

Applicant was examined by the AME on September 16, 2013 for the AME report of October 14, 2013. (AME report of October 14, 2013 at 1.) The medical records in Exhibits 1, 3 and 16 were in existence by May 30, 2013, and should have been provided to the AME. Payments were made by defendant on billings for the period of April 26, 2013 through September 25, 2013. (Ex. 12.) The AME could have included more information about applicant’s use of the H-wave or if she had a “patient diary” but he did not. Applicant has settled her case by Compromise and Release. The AME is no longer available, and applicant did not participate in the lien trial. As such, further development of the record is not an option. Based on the evidence on hand, the lien claimant has met its burden of proof. The lien should be allowed.

#### **IV. RECOMMENDATION**

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be DENIED.

DATE: 11-14-2022

**Therese Da Silva**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE