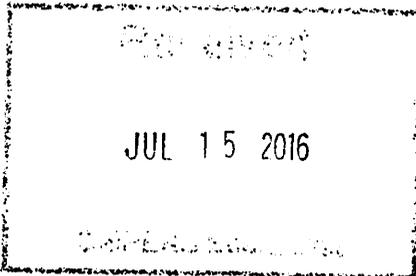


ATTACHMENT A
RESPONDENT'S PETITION FOR RECONSIDERATION



1 RICHARD E. ELDER, JR., SBN: 46685
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4 Concord, CA 94519
5 (925) 676-7991
6 Attorneys for Respondent

7 **BEFORE THE BOARD OF AMINISTRATION**
8 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

9 In the Matter of the Application for
10 Reinstatement From IDR,

OAH No.: 2015040240

11 CALIFORNIA PUBLIC EMPLOYEES'
12 RETIREMENT SYSTEM,

Agency No.: 2015 0081

13 Petitioner,

PETITION FOR RECONSIDERATION

14 v.

15 LORI GIBSON AND DEPARTMENT OF
16 CORRECTIONS & REHABILITATION ,

17 Respondents.

18 COMES NOW RESPONDENT, LORI GIBSON, and Petitions for Reconsideration the
19 Decision of California Public Employees' Retirement System mailed June 20, 2016 finding, in
20 essence that Respondent is no longer substantially incapacitated from her former duties as a
21 Corrections Officer.

22 RESPONDENT, LORI GIBSON, Asserts that the findings are not supported by the
23 evidence, and that the findings do not support the conclusion, and that the preponderance of the
24 evidence does not support either the findings or the conclusion, and that the opinions of Dr. Serra
25 are not substantial evidence to support the decision.

26 FACTUAL BACKGROUND, Lori Gibson was injured in her work as a Correctional
27 Officer. Her treating doctors and workers' compensation consultants found her to be disabled.
28 However, CalPERS did not accept those opinions but, instead sent her to Dr. Fisher, in 2003. Dr.
Fisher found her to be disabled from her usual work. CalPERS granted Industrial Disability

1 Retirement in 2003. CalPERS then required Ms. Gibson to be evaluated by a different doctor, in
2 2011. Their doctor, Dr. Katz, confirmed that Ms. Gibson was still disabled in 2011. Neither doctor
3 found major objective findings, but the combination of some objective evidence plus subjective
4 complaints convinced these two, handpicked, CalPERS consultants to agree with the treating and
5 workers' compensation consulting doctors, that she remained disabled.

6 In 2014, required Ms. Gibson to see yet a third doctor, Dr. Serra. No explanation was given
7 for this "doctor shopping." Dr. Serra found modest objective findings with a few range of motion
8 measurements restricted about ten degrees. He discounted her subjective complaints as
9 exaggerated. He disagreed with all of the other physicians in this regard.

10 The direct medical evidence considered at hearing herein includes the opinions of Dr. Serra
11 on the one hand, versus Dr. Burt who examined and testified at the request of Ms. Gibson's lawyer,
12 but in addition the opinions of Dr. Fisher and Dr. Katz were considered as direct evidence and
13 contradict Dr. Serra's opinion that Ms. Gibson exaggerates her complaints. Dr. Fisher and Dr. Katz
14 are CalPERS IME's, supposedly "Independent" but, perhaps could be expected to resolve doubts on
15 subjective complaints in CalPERS favor. In addition to the direct evidence, the opinions of the long
16 term treating doctor, Dr. Meadows, and the workers' compensation consultant, Dr. Garland,
17 confirm disability and that Ms. Gibson is credible regarding subjective complaints.

18 DETERMINATION After hearing and briefing, the ALJ proposed finding that Dr. Serra's
19 opinions are persuasive and that the request of CalPERS to involuntarily reinstate Ms. Gibson from
20 disability retirement should be GRANTED. On or about June 14, CalPERS Board voted to adopt
21 the proposed decision and to involuntarily reinstate Ms. Gibson.

22 RESPONDENT, LORI GIBSON PETITIONS FOR RECONSIDERATION.

23 ARGUMENT

24 The only "evidence" to support the decision to reinstate is the opinions of Dr. Serra.
25 Dr. Serra's opinions are not preponderant, and are not even substantial evidence.
26 Dr. Serra finds that there are very few objective findings. By the time Ms. Gibson was granted her
27 IDR in 2003, there were already very few objective findings and after that on re-examination by Dr.
28 Katz (CalPERS IME) in 2011 and on routine treatment throughout her disability, there have never
been very many objective findings. But there is no requirement in the law that disability be

1 predicated upon "objective findings." Dr. Serra's opinions regarding relative lack of "objective" or
2 measurable findings in late 2014 are no change from findings from the last eleven years including
3 the findings of Dr. Katz and Dr. Fisher. Dr. Burt (Respondent Gibson's consultant) did find more
4 or greater "objective" or measurable findings than Dr. Serra, but even Dr. Burt did not discover
5 many or huge measurable defects. One cannot always "measure" disability.

6 Part of disability or incapacity is how the injury impedes activity on a subjective basis, that
7 is, pain or other non-measurable impairment. Dr. Serra felt he had insight lacking to all of the other
8 doctors. He implied that Dr. Burt, as "Respondent's witness" overstated disability, but that he,
9 Dr. Serra claims the true vision. Dr. Garland and Dr. Meadows disagreed with Dr. Serra but he
10 discounted their opinions as either too close to the patient or otherwise biased. Though Dr. Katz
11 and Dr. Fisher were picked by CalPERS and they found her both credible and disabled, Dr. Serra
12 found them "overly generous." Only Dr. Serra knew the truth.

13 Respondent asserts that when five doctors, including two that were handpicked by CalPERS,
14 find the patient both credible and incapacitated and when only one doctor finds to the contrary, the
15 preponderance of the evidence shows incapacity.

16 To the argument that "she might have improved since 2011 when Dr. Katz saw her" Ms.
17 Gibson responds: 1. It is inherently unlikely that some spontaneous recovery would happen about
18 ten years after the injury, 2. She says she did not improve, 3. Her treater, Dr. Meadows does not
19 show improvement (though Dr. Meadows did not testify) 4. Dr. Burt reports and testified she did
20 not improve. 5. Dr. Serra's opinion is really that she never was disabled and should not have had
21 the retirement in 2003, but the determination of 2003 and 2011 was final. 6. Dr. Serra's opinion
22 that Ms. Gibson exaggerates her complaints is at odds with the opinions of five other doctors and it
23 is inherently improbable that Ms. Gibson would suddenly begin to exaggerate 11 years after injury.

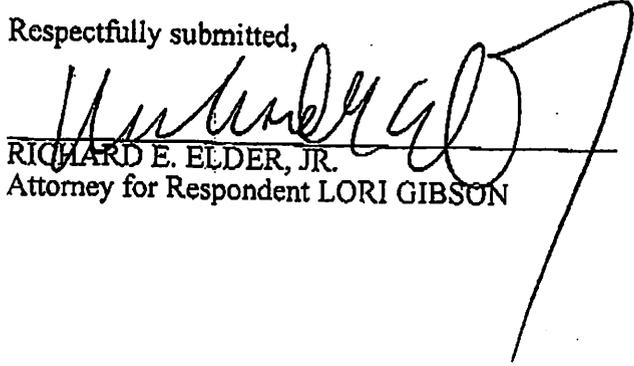
24 Dr. Serra's opinions, at odds with five other doctors, and apparently based on the incorrect
25 legal theory that disability must be based on objective findings, are neither preponderant evidence,
26 nor even substantial. His opinions do not support the conclusions or decision and it is improper for
27 the Board to rely upon Dr. Serra's opinions. As there is no other evidence of any sort which even
28 purports to support the decision, it should be Reconsidered.

1 Ms. Gibson was incapacitated in 2003, and 2011 and remains incapacitated within the
2 meaning of GC 20026, as considered in Mansperger, 6 Cal App 3d 873, and Hosford 77 Cal App 3d
3 854.

4 CalPERS has NOT carried the burden of proving by the preponderance of evidence that Ms.
5 Gibson is no longer substantially incapacitated from performing her usual arduous duties as a
6 Correctional Officer. The Decision and Order of CalPERS should be Reconsidered and a new
7 decision/order issue finding that CalPERS has NOT carried the burden and that the CalPERS
8 Petition For Involuntary Reinstatement should be denied.

9
10
11 Dated: July 15, 2015

Respectfully submitted,


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13 RICHARD E. ELDER, JR.
14 Attorney for Respondent LORI GIBSON
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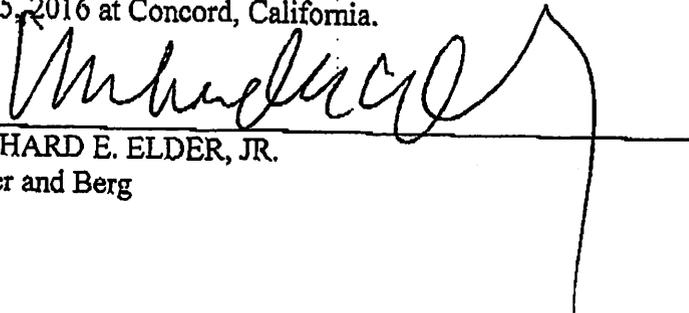
STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

)
) ss.
)

I am the attorney for LORI GIBSON in the above-entitled action; I have read the foregoing Petition for Reconsideration and know the contents thereof; and I certify that the same is true of my own knowledge, except to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 15, 2016 at Concord, California.



RICHARD E. ELDER, JR.
Elder and Berg

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PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)
STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 3107 Clayton Road, Concord, California.

On July 15, 2016, I served the within Petition for Reconsideration, on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Concord, California, addressed as follows:

Cheree Swedensky, Assistant to the Board
Executive Office
California Public Employees Retirement System
P.O. Box 942701
Sacramento, CA 94229
VIA FAX TO (916) 795-3972

Matthew Jacobs
General Counsel
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229
VIA FAX TO (916) 795-3659

Lori Gibson
VIA EMAIL

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 15, 2016, at Concord, California.

