ATTACHMENT A

RESPONDENT’S PETITION FOR RECONSIDERATION
Petition for Reconsideration

Derrick McGaskey

November 30, 2018

CalPERS Executive Office
PO Box 942701 Sacramento Ca. 94229-2701
(916) 795-3972

RE: Respondent's Argument In the Matter of the Application for Disability Retirement of Derrick McGaskey, Respondent and Department of Health Care Services, Respondent

Dear Board of Administrative of the California Public Employees' Retirement System (CalPERS):

I received a letter from CalPERS dated October 10, 2018 regarding my application for Disability Retirement and the decision to deny my application by the Administrative Law Judge. I am submitting in writing to ask the Board for consideration. I sustained a significant injury and have pre-existing health issues in which currently has incapacitated me from my customary duties as an Associate Governmental Program Analyst for the Department of Health Care Services.

CalPERS basis to Grant DR/IDR is governed by specific laws and regulations contained in the CalPERS Retirement Law.

Government Code Section 20026 defines "disability and incapacity for the performance of duty".

"Disability and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent of extended duration, which is expected to last at least 12 consecutive months...on the basis of competent medical opinion.

Based on Board Certified Dr's... Dr. Dennis Hembd, of Northern California Spine & Rehabilitation Association, Dr. Hunter S Greene of Summit Orthopedic Specialists and Dr. Patrick Lau of Natomas Family Practice.

I have been off work for 17 consecutive months since May 22, 2017 thru November 30, 2018. (See attached) due to limit of pages I can remit (latest Dr Report is available on Request)
Petition for Reconsideration

I currently suffer from known history of Coronary Artery disease status post previous myocardial infarction and percutaneous coronary intervention with multiple stent placements in my heart. This has caused me to be hospitalized at Sutter and Mercy General four different occasions within the past year, my last visit and overnight stay in the hospital was on my birthday October 10, 2018, at Mercy Hospital. I have had 2 back surgeries in 2013, a shoulder surgery in 2017 multiple back and shoulder injections 2018. I suffer from Bursitis in my left hip and chronic radiculopathy in my right leg. Sever chronic pain in lower back.

According to the CalPERS Disability Retirement Resource Guide, “When to apply for Disability Retirement”. The member should immediately apply if they unable to perform the usual duties of their position, due to a physical or mental condition, or if the condition is expected to be permanent of last longer the 12 months.

I submitted my application for Disability Retirement on May 30, 2017. July 2017 CalPERS requested a new Physician’s Reports from Dr. Hembd, Dr. Lau and the Workers Comp. The Physician’s Report all reported in section 5 stated that 2. Will the Incapacity be permanent Dr. Hembd and Dr. Lau check the yes box? Received Aug 11 2017 by CalPERS (see attached)

The Workers Compensation Physician Report could only confirm 6 months to a year 12 months of incapacity due to workers’ comp laws.

(See attached)

Retirement for disability is available to all members (miscellaneous, Industrial and Safety classifications) credited with at least five years of service credit for First Tier and at least 10 years of service credit if Second Tier.

As of November 30, 2018 I have 15.166 years of state service, and still employed with the Department of Health Care Services. (See attached) According to the CalPERS Disability Retirement Resource Guide, Application Requirements under Government Code section 21154 The application shall be made only (a) while the member is in state service, or the member may apply (d) While the member is physically or mentally incapacitated to perform duties from the date of from the date of discontinuance of service to the time of application.

Summary

The sole issue on appeal is that Mr. McGaskey has substantially been incapacitated for the performance of my duties as an Associate Governmental Program Analyst with DHCS due to orthopedic (back, shoulder and hip) and cardiologic (heart) conditions at the time I applied for disability retirement. I have medical evidence by Board Certified Dr’s. that established I was substantially Incapacitated. I am have not worked since 05/22/2017. I have been off work due to my back which I have had two surgeries; I have had surgery on my shoulder on 12/29/17. I have had multiple injections in my hip, back and shoulder. And been hospitalized multiple times due to the 3 stents in my heart and chest pains (Angina) diagnosed by my cardiologist.

In CALPERS Factual Findings
Petition for Reconsideration

1. On May 30, 2017 I turned in my Disability application because my last day I worked was on 05/22/2017 due to my orthopedic and cardiologic conditions.
2. I worked on a part-time basis from 09/08/2016 till 05/22/2017 due to Workers Comp Injury... in which Board Certified Dr's took me off work... I am still off work as of November 30, 2018.
3. I identified my limitations due to my disabilities: yes modified duty 5 hours a day. Due to Workers comp injury... I can not violate the Workers Comp Laws governed by SCIF... I would loose my benefits...
4. On October 24, 2017 CalPERS sent me a correspondence denying my application for disability retirement. I appealed the decision...
5. Wow I find it hard to believe an employee of the CALPERS retirement system with 15 years of service, is found that his employment history is not accurate by your Counsel during the Administrative Hearing conceding I only have 5 years of state service. I have provided a print out of my official CALPERS years of service which indicate 15.1116 years of state service. Never worked for the Correction and Rehabilitation department as your Counsel stated.

Both Dr's James Schmitz and Dr. Harry Khasigian provided testimony on a single visit.

Neither Dr. had any of my most recent medical records. I have had surgeries multiple stay in hospital, multiple injections in my back, hip and shoulder. I am still under the orthopedic DR. care... I am off work.... Government Code section 20026 provides, in pertinent part:

1. If the medical examination and other available information show the satisfaction of the Board... that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability the board shall immediately retire him or her of disability...

2. In determining whether a member is eligible to retire for disability, the board ... Shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

I have been incapacitated by Board Certified and Workers Compensation, since 05/22/2017... I can not go against the Dr. and make myself go back to work. Please approve my Disability Retirement based on the Government Code section 20026.

Conclusion

I have established I was substantially incapacitated for the performance of my duties as an Associate Governmental Program Analyst with DHCS due to orthopedic (back, shoulder and hip)
Petition for Reconsideration

and cardiologic (heart) conditions when I applied for disability retirement. Therefore I am asking the Board to approve my Disability Retirement.

Sincerely,

Derrick McGaskey
NCSRA MEDICAL CORPORATION
Phone (916) 389-7100 * Fax: (916) 389-7140

WORK STATUS
Report is eligible for reimbursement under California's OASIS - bill code 20003.

EMPLOYEE: Derrick Megaskey
FAX: ADJ F-707-648-0329 NCM F: EMP HR Dept:
CLAIM #: 05224330 D0109/08/16 L HIP/L SHOULDER

MAY RETURN TO WORK: ☐ Full Duty ☐ Restricted Duty ☑ No Work "Provide reason: ☐ Estimated time off
"If NO WORK, PROVIDE ADDITIONAL INFORMATION AS TO WHY THE INJURED WORKER CANNOT PERFORM ANY WORK DUTY:
☐ Bedbound/ Housebound requiring tending effort to leave home/ unable to leave home.
☐ The injured worker is within days of surgery.
☐ Unable to perform activities of daily living at home or at work.
☑ Other circumstances: Unable to stand, walk or sit req due to meaningfull work

☐ NO WORK INVOLVING RESTRICTIONS (apply at home as well as at work)
HAND: ☐ Left ☐ R ☐ Both ARMS: ☐ Left ☐ R ☐ Both LEGS: ☐ Left ☐ R ☐ Both
☐ WEAR SPHINTER/ BRACE/ CAST
☐ SITTING JOB - sit for at a time
☐ STANDING JOB - stand for at a time
☐ SQUATTING: ☐ occ ☐ frequent
☐ REPETITIVE TASKS for at a time
☐ TWIST: ☐ occ ☐ frequent
☐ NO VIBRATORY TOOLS OR GUNS
☐ OTHER:

UPLIFTING/CARRYING:
☐ Minimal (0-5 lbs) ☐ Light (5-15 lbs)
☐ Moderate (15-50 lbs) ☐ Heavy (50+ lbs)

BENDING/STOOPING:
☐ occ ☐ frequent

FLEXING/BENDING:
☐ Light (10-25 lbs) ☐ Moderate (25-50 lbs)
☐ Heavy (50+ lbs) ☐ lbs

DURATION OF RESTRICTIONS: 4WKS
REACHED M/A: ☐ YES ☑ NO
NEXT APPEL DATE: 6/13/2017
OTHER COMMENTS: ☐ Narrative report to follow

Dennis Michael Hembdi, MD
Date: 6/13/2017 Co-signature:
**WORK STATUS**

Report is eligible for reimbursement under California's COMP - bill code 94581.

**EMPLOYEE**: Derrick Megasky

**FAX**: ADI P: State Comp Ins Fund No Dmg/Dr Disp F:707-646-0439 P: EMP HR Dept: STATE OF CA F: CLAIM #: 05224239 DOB: 09/08/16 L HIP/L SHOULDER

FILL IN THE BOX WHEN RETURN TO WORK

- [ ] Full Duty
- [ ] Restricted Duty
- [ ] No Work *Provide reason
- [ ] Estimated time off

**NO WORK INVOLVING RESTRICTIONS (animal as home as well as at work)**

- [ ] No Headache
- [ ] No Soreness
- [ ] No Fatigue
- [ ] No Weakness
- [ ] No Rash
- [ ] No Fever
- [ ] No Chills

**HANDS**: [ ] Left [ ] Right [ ] Both

- [ ] No overhead work at or above 90 degrees
- [ ] No to operate moving machinery
- [ ] No to get on/off moving equipment
- [ ] No driving
- [ ] Change positions as necessary
- [ ] Work 40 hour day 5 day week
- [ ] No additional restrictions

**SITTING/STANDING**: [ ] Sit [ ] Stand [ ] Sit/Stand

- [ ] Light (10-25 lbs)
- [ ] Moderate (25-50 lbs)
- [ ] Heavy (50+ lbs)
- [ ] No

**LIFTING/CARRYING**: [ ] Lift (10-25 lbs) [ ] Moderate (25-50 lbs) [ ] Heavy (50+ lbs)

- [ ] OSHA
- [ ] No

**RANGE OF MOTION**: 6 weeks

- [ ] Reach back
- [ ] Reach forward

**NEXT APPOINTMENT**: 06/21/18

**OTHER COMMENTS**: Needs to be medically cleared by surgeon, before RTW status.

Thomas Brudz PA-C, ATC
Date: 06/21/18 Co-signatures
WORK STATUS

Report is eligible for reimbursement under California's CMRS - bill code 8388.1.

EMPLOYEE: Derrick McGahey

FAX: ADI F: State Comps Fund No Dm/Dr Disp F:707-646-0439 F: NCM F: EMP HR Dept: STATE OF CA P:
CLAIM #: 0224230 DOB: 09/08/16 L HIP/L SHOULDER

MAY RETURN TO WORK:
☐ Full Duty ☐ Restricted Duty ☑ No Work Petition reason ☐ Discharged time off

☐ "NO WORK" PROVIDE ADDITIONAL INFORMATION AS TO WHY THE INJURED WORKER CANNOT PERFORM ANY WORK DUTIES:
☐ Inpatient/Inpatient requiring transfer effort to leave home or unstable to leave home.
☐ The injured worker is within 2 weeks of surgery.
☐ Unable to perform activities of daily living at home or at work.
☑ Other circumstances reported as still WTD by his shoulder surgeon.

☐ NO WORK INVOLVING RESTRICTIONS: Potty at home as well as at work:

☐ Hands: ☑ Both R L ARM: ☑ Both R L LEAD: ☑ Both R L
☐ WEAR SPLINT/Brace/Cast ☑ NO OVERHEAD WORK AT OR ABOVE 90 degrees
☐ SITTING JOB - sit for a 8 hour
☐ STANDING JOB - stand for an 8 hour
☐ SQUAT ☑ occ ☑ frequent
☐ REPETITIVE TASKS for 8 hour
☐ TWIST ☑ occ ☑ frequent
☐ NO VIBRATORY TOOLS OR GUNS ☑ ADDITIONAL BREAKS
☐ OTHER:

LIFTING/CARRYING:
☐ Minimal (0-5 lbs) ☑ occ
☐ Light (5-10 lbs) ☑ frequent
☐ Moderate (15-50 lbs) ☑ Heavy (50+ lbs)
☐ Very heavy (50+ lbs)

BENDING/STORING:
☐ occ

FLEXING/EXTENDING:
☐ Light (10-25 lbs)
☐ Moderate (25-50 lbs)
☐ Heavy (50+ lbs)

CLIMBING:
☐ No vertical ladder
☐ No steps
☐ No stairs

DURATION: 6 weeks
11/08/18

NEXT APPOINTMENT DATE:

REACHED MMI: ☑ YES ☑ NO

OTHER COMMENTS:
☑ Narrative report to follow

Thomas Strutz PA-C, ATC
Date: 9/24/19 Co-Signature
DATE OF ADMISSION: 10/11/2018

DATE OF DISCHARGE: 10/13/2018

FINAL DIAGNOSES:
1. Chest pain with known history of coronary artery disease status post previous myocardial infarction and percutaneous coronary intervention with multiple stent placements.
2. Hyperlipidemia.
3. Diabetes mellitus type 2.
4. 

HISTORY OF PRESENT ILLNESS AND HOSPITAL COURSE: Patient was seen and examined on the day of discharge. Briefly, he is a 51-year-old male with a history of coronary artery disease and MI status post PCI with 3 stent placements to the LAD in 12/2016, which was performed by Dr. Marquardt. He last presented with chest pain in 03/2017 with chest pain and underwent cardiac catheterization, which revealed widely patent stents and no evidence of recurrent obstructive coronary disease. Despite this, he has had issues with ongoing chronic angina. He is followed by Dr. Bains, who recently started him on Ranexa. However, there is a question of noncompliance with medications. The patient denies noncompliance. He presented again with chest pain and chest discomfort, which he described as 9/10 in intensity and lasting for approximately 15 minutes. The chest pain occurred at rest. For further details, please see admission H and P. Upon arrival to the ER, patient was markedly hypertensive with a BP of 188/105. Pulse was 124 and rhythm was sinus. His EKG revealed T-wave inversions in V2 through V5, but no ST segment changes. He also had T-wave inversions in lead I. First troponin was 32. While CBC and BMP were essentially unremarkable apart from a mildly elevated creatinine of 1.33. Urine drug screen was positive for opiates, marijuana, and oxycodone. Patient does take opiates at home for chronic back pain. Chest x-ray was clear of infiltrates or pulmonary edema. The remainder of his workup was unremarkable.

Patient was monitored overnight on telemetry and serial troponins were checked. His troponin peaked at 38 and is now down trending. He did continue to have intermittent chest pain throughout his hospital course and in fact had an episode of severe chest pain during his stress test this morning, which necessitated a rapid response. At the time of his chest pain, the patient's systolic BP was in excess of 200. He was given a sublingual nitroglycerin with complete relief of chest pain. The patient is now chest pain free and his blood pressure has stabilized with his most recent BP 142/94.

Legend:  
C=Corrected  *=Comment  H=High  L=Low
Lab Legend:  C= Critical  @=Corrected  *=Abnormal  H= High  L=Low  i=Interpretive Data  f=Footnotes

Laboratory Medical Director: Anna K. Wong, M.D.
Date/Time Printed: 10/24/2018 11:16 PDT
### Physician's Report on Disability

**CalPERS**

**Member Information**

**Derrick McGlaskey**

<table>
<thead>
<tr>
<th>Diagnosis</th>
<th>Date of Occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Spinal stenosis, lumbar region</strong></td>
<td>7/14/15</td>
</tr>
</tbody>
</table>

**Member History**

<table>
<thead>
<tr>
<th>Date of Injury</th>
<th>Date of Medical Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/14/15</td>
<td>7/17/17</td>
</tr>
</tbody>
</table>

**Examination Findings**

**Chronic pain disorder**

**Chronic low back**

<table>
<thead>
<tr>
<th>Examination</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Left</td>
<td>2/40</td>
</tr>
<tr>
<td>Right</td>
<td>188</td>
</tr>
</tbody>
</table>

**Diagnosis**

<table>
<thead>
<tr>
<th>Diagnosis</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LUM5 L.</strong></td>
</tr>
<tr>
<td>Spinal stenosis, lumbar region</td>
</tr>
<tr>
<td>Other intervertebral disc displacement, lumbar region</td>
</tr>
</tbody>
</table>

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**Attachment:**

- Social Security number: [Redacted]

---

**CalPERS:**

[Phone number]

[Address]

[Fax number]

[Website]

---

**Received:**

Aug 11, 2017

Sacramento Regional Office
Member Incapacity

To qualify for a disability retirement, the CalPERS member must be substantially incapacitated from the performance of the usual duties of his/her position with the current employer. Thus, substantial incapacity must be due to a medical condition of permanent or extended duration that is expected to last at least 12 consecutive months or to result in death. Disability is not necessarily an inability to perform fully every function of a given position. Rather, the courts have concluded that the test is whether the member has a substantial inability to perform the usual and customary duties of the position. Prophylactic restrictions are not a basis for a disability retirement.

1. Is the member currently substantially incapacitated from performance of the usual duties of the position for their current employer? 
   - Yes ☐ No ☐
   If yes, you must describe specific job duties/work activities that the member is unable to perform due to incapacity. Refer to member's job duty statement and Physical Requirements of Position/Occupational Title form.

2. Will the incapacity be permanent? 
   - Yes ☒ No ☐
   If not, will the incapacity last longer than 12 months? 
   - Yes ☐ No ☐

3. Was the job duty statement/job description reviewed to make your medical opinion? 
   - Yes ☒ No ☐

4. Was the Physical Requirements of Position/Occupational Title form reviewed to make your medical opinion? 
   - Yes ☒ No ☐

5. Was information reviewed that the member provided? 
   - Yes ☒ No ☐
   If so, please attach the information provided by the member.

Physician's Signature

User, CalPERS has my permission to release a photocopy of report to member upon written request. 
- Yes ☒ No ☐

Dennis M. Hembd

2801 K St Suite 410
Sacramento, CA 95816

Physician's Signature

Mail completed report directly to CalPERS
Do not give to member

All questions on this form must be answered or application will be incomplete which will delay processing
Physician's Report on Disability

Section 1
Member Information

Name: [Redacted]
Affiliation: [Redacted]
Social Security Number: [Redacted]

Section 2
Member History

Date of Injury: 11/21/16
Date of Disability: 11/21/16

Origin of Injury: Work Related
Nature of Injury: Non-Work Related

Section 3
Examination Findings

Chest Pain

Date: 11/21/16

Section 4
Diagnosis

Coronary Artery Disease

Additional Information

Examination Findings:

Diagnosis: [Redacted]

Signature: [Redacted]

Sutter Health Epic Upload on 5/31/2017 at 2:10:42 PM
Sutter Health Epic Upload on 7/31/2017 at 12:34:29 PM
July 28th, 2017

Re: Derrick McGaskey

DOB: [redacted]

To whom it may concern

Mr. McGaskey has a history of Coronary Artery disease causing severe chest pain, shortness of breath and necessitating the placement of several stents in his heart. He is currently under the care of a Cardiologist and is taking Flavox to prevent another coronary event. In addition, he is also taking Metoprolol and Isosorbide Mononitrate. I feel that this patient is permanently disabled. Feel free to contact me with any questions.

Sincerely,

Dr. Patrick Lau
Member Incapacity

To qualify for a disability retirement, the CalPERS member must be substantially incapacitated from the performance of the usual duties of their position with the current employer. This substantial incapacity must be due to a medical condition of permanent or extended and uncertain duration. Disability is not necessarily an inability to perform fully every function of a given position. Rather, the courts have concluded that the test is whether the member has a substantial inability to perform the usual and customary duties of the position. Prophylactic restrictions are not a basis for a disability retirement.

1. Is the member currently substantially incapacitated from performance of the usual duties of the position for their current employer? □ Yes □ No
   If yes you must describe specific job duties/work activities that the member is unable to perform due to incapacity. Refer to member’s job duty statement and Physical Requirements of Position/Occupational Title form.

2. Will the incapacity be permanent? □ Yes □ No
   If not, provide duration □ < 6 months □ 6 months - 1 year □ 1 - 2 years □ Other
   If other please describe.

3. Was the job duty statement/job description reviewed to make your medical opinion? □ Yes □ No

4. Was the Physical Requirements of Position/Occupational Title form reviewed to make your medical opinion? □ Yes □ No

5. Was information reviewed that the member provided? □ Yes □ No
   If so, please attach the information provided by the member.

Physician’s Signature

CalPERS has my permission to release a photocopy of report to member upon written request. □ Yes □ No

Thomas Brown, M.D. 916-389-7140
Physician Name Phone Number
2801 K St Suite 410
Address
Sacramento, CA 95818

[Signature] 07/13/2017
Date
Mr Derrick L McGaskay  
Male  DOB: [redacted]  211788

Provider: Hunter S. Greene MD  
Location of Care: Summit Orthopedic Specialists - Coyle Office

SUMMIT ORTHOPEDIC SPECIALISTS  
6403 Coyle Avenue, Suite 170  
Carmichael, CA 95608  
(916) 965-4000  
(916) 965-6053 FAX

DISABILITY CERTIFICATE - WORK/SCHOOL/PE RELEASE

I hereby certify that Mr Derrick L McGaskay has been under my care for: Left shoulder surgery.

He is:

Restriction: works status per PTP

Electronically signed by Hunter S. Greene MD on 09/17/2018 at 9:58 PM
Dear DERRICK MCGASKEY:

This is in response to your request on October 29, 2018 with the California Public Employees' Retirement System (CalPERS).

Your account balances:

<table>
<thead>
<tr>
<th>Account Number:</th>
<th>Total Contributions:</th>
<th>Total Service Credit:</th>
</tr>
</thead>
<tbody>
<tr>
<td>CalPERS ID</td>
<td></td>
<td>15.166</td>
</tr>
</tbody>
</table>

Your balances are current through your last employer reporting. Second tier members do not contribute to the system and only accrue service.

If you have converted your service credit purchase through Actuarial Equivalent Reduction, adjustments to the contributions will be calculated and reduced at retirement.

These funds cannot be borrowed against and are available to you only upon permanent separation from all CalPERS and reciprocal covered employment. The interest credited to your account was computed at the annual interest rate of 6.0%.

If you have any questions, please visit our website www.calpers.ca.gov, or you may contact us toll free at 888 CalPERS (or 888-225-7377).
Petition for Reconsideration

and cardiologic (heart) conditions when I applied for disability retirement. Therefore I am asking the Board to approve my Disability Retirement.

Sincerely,

Derrick McGaskey

1/30/18
Fax Cover Sheet

Date 11/30/18

To: 
Name: MATTHEW G. JACOBS
Company: CAL PERS, Gen Counsel
Telephone: 
Fax: 916-795-3659
Comments: Please accept this fax as Petition for Reconsideration. Thank you.

From: 
Name: DERRICK McGASKEY
Company: Dept. Health Care Service
Telephone: 
Fax: 916-795-3659

Fax: 1.800.GoFedEx 1.800.463.3339
Fedex.com 1.800.GoFedEx 1.800.463.3339
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