

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

Fax Cover Page

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 Subject: Courtesy Copy – Petition for Reconsideration – Case No. 2024-0309

 Message: To: Renee Salazar, Interim General Counsel – CalPERS
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From: Samuel Presten

Date: February 19, 2026

Subject: Courtesy Copy – Petition for Reconsideration – Case No. 2024-0309

Pages: 6 (including cover)

Message:
 Courtesy copy of Petition for Reconsideration submitted by email today.

Thank you.

Samuel Presten

PETITION FOR RECONSIDERATION

**In the Matter of the Appeal for Disability Retirement of
SAMUEL PRESTEN,**

Respondent,
and

DEPARTMENT OF TRANSPORTATION DISTRICT 10,
Respondent.

Case No.: 2024-0309

OAH No.: 2024120163

TO THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES 'RETIREMENT SYSTEM:

Respondent Samuel Presten respectfully petitions the Board of Administration for reconsideration of its Decision adopted January 20, 2026, pursuant to Government Code section 11521. This Petition is timely filed in accordance with applicable statutory requirements.

Reconsideration is warranted because the Board's Decision is based on errors of law, misapplication of the substantial evidence standard, and failure to properly consider material objective medical evidence demonstrating that Mr. Presten is substantially incapacitated from the performance of his usual duties.

I. INTRODUCTION

Mr. Presten suffers from disseminated coccidioidomycosis with chronic pulmonary and systemic sequelae. He experiences persistent exertional dyspnea, fatigue, weakness, joint pain, requires supplemental oxygen with exertion, and has been unable to work since October 2019 following a disease course beginning in 2016. His treating physician, Karthikeya Devireddy, M.D., has opined that Mr. Presten is permanently disabled and unable to perform the physical requirements of his position as an Equipment Operator II.

The Decision improperly discounts Mr. Presten's treating physician evidence supported by objective testing, and improperly relies on an incomplete opinion by the CalPERS-retained evaluator. When the full medical record is considered, substantial evidence supports a finding of substantial incapacity.

II. LEGAL STANDARD

Reconsideration is appropriate where the Board has committed legal error, relied on incomplete or inaccurate factual premises, or failed to consider material evidence. (Govt. Code, § 11521.)

A disability retirement applicant need only establish, by a preponderance of the evidence, a substantial inability to perform usual duties. (Mansperger v. PERS (1970) 6 Cal.App.3d 873, 877.) The standard does not require total incapacity, nor does it permit rejection of treating physician opinions solely because symptoms are chronic or partially subjective when supported by objective testing and consistent clinical findings.

II.A. PRESTEN'S CONDITION MEETS THE STATUTORY DURATION REQUIREMENT AS A MATTER OF LAW

Government Code section 20026 defines "disability" as a condition of permanent or extended duration which is expected to last at least twelve consecutive months or result in death.

Mr. Presten was diagnosed with disseminated coccidioidomycosis in 2016. He has remained symptomatic for nearly a decade despite continuous treatment, requires long-term antifungal therapy, and has been unable to work since October 2019.

His treating physician has documented recurrent fatigue, generalized weakness, exertional dyspnea, oxygen requirement with activity, and permanent disability. No medical evidence suggests that Mr. Presten's condition is temporary, self-limiting, or expected to resolve.

Accordingly, the statutory duration element is indisputably satisfied. The only remaining issue is whether Mr. Presten is substantially incapacitated from performing his usual duties — which, when all objective and treating physician evidence is properly considered, he is.

III. THE DECISION RESTS ON AN INCOMPLETE AND FLAWED MEDICAL FOUNDATION

A. Dr. Tirmizi Did Not Review Critical Objective Evidence

CalPERS's IME doctor, Dr. Tirmizi, opined that Mr. Presten was not substantially incapacitated because pulmonary function testing showed that his lung capacity was normal. However, pulmonary function testing performed in August 2023 (before Dr. Tirmizi's final opinion was issued), showed **mild to moderate obstructive pulmonary impairment**. Dr. Tirmizi acknowledged that he did not review subsequent evaluations of Mr. Presten's pulmonary function by Dr. Stewart Lonky.

An expert opinion rendered without consideration of key objective testing cannot constitute substantial evidence. "Where an expert bases his conclusion upon assumptions which are not supported by the record, upon matters which are not reasonably relied upon other experts, or upon factors which are speculative, remote or conjectural, then his conclusion has no evidentiary value. In those circumstances the expert's opinion cannot rise to the dignity of substantial evidence." *Parker v. Pub. Employees' Ret. Sys.*, No. C085763, 2018 WL 6444185, at *8 (Cal. Ct. App. Dec. 10, 2018).

The Board's reliance on an IME opinion formed without review of material medical evidence is legal error.

B. Treating Physician Evidence Was Improperly Discounted

Mr. Presten's treating physician, Dr. Devireddy, opined:

- Mr. Presten remains permanently disabled due to disseminated coccidioidomycosis
- He cannot walk more than two to three blocks without significant shortness of breath

- He requires two liters of supplemental oxygen for extended physical activity
- He cannot perform many job duties due to fatigue, dyspnea, and joint pain

The Decision characterizes these findings as merely "subjective," ignoring that:

- Pulmonary function testing demonstrated obstructive impairment,
- Chronic antifungal therapy is required and is known to cause the symptoms Mr. Presten reports, and
- Oxygen desaturation with exertion is an objective physiological limitation.

The Decision suggests that only normal CT scans and titers are relevant. This misstates the legal standard.

Pulmonary disability is commonly demonstrated by:

- Pulmonary function testing
- Exercise intolerance
- Oxygen desaturation with exertion
- Functional limitations

Normal parenchymal imaging does not negate functional pulmonary impairment.

Disability retirement law requires substantial inability to perform duties, not radiographic destruction of lung tissue.

IV. THE DECISION FAILS TO PROPERLY ANALYZE ACTUAL JOB DUTIES

Mr. Presten's position requires:

- Prolonged driving
- Standing and walking
- Lifting and carrying
- Exposure to dust, fumes, and chemicals
- Operating heavy and hazardous equipment

A worker who becomes short of breath after walking two to three blocks and requires supplemental oxygen with exertion cannot safely and reliably perform these tasks.

The Decision does not reconcile these functional realities with the medical evidence.

V. THE BOARD'S MODIFICATION ITSELF DEMONSTRATES MATERIAL ERROR AND UNRELIABLE FACTUAL FINDINGS

The Board modified the Proposed Decision to correct a material misstatement regarding whether Dr. Tirmizi believed Mr. Presten "did not have an actual" pulmonary impairment.

This correction is not a mere typographical change. It alters the substantive meaning of the medical evidence relied upon by the Administrative Law Judge and confirms that the Proposed Decision contained an inaccurate characterization of critical testimony.

Where a decision is founded upon misstatements of material medical evidence, it cannot constitute substantial evidence.

The necessity of this correction demonstrates that the fact-finding process was flawed and further supports reconsideration and independent review of the full medical record.

VI. WHEN THE RECORD IS PROPERLY CONSIDERED, PRESTEN MET HIS BURDEN

The record shows:

- Objective pulmonary function abnormalities
- Chronic systemic fungal disease
- Long-term antifungal therapy
- Oxygen requirement
- Treating physician permanent disability opinion
- Inability to tolerate exertion, elevation, or prolonged activity

Collectively, this establishes a substantial inability to perform Mr. Presten's usual duties.

Under the preponderance standard, Mr. Presten is entitled to disability retirement.

VII. REQUESTED RELIEF

Mr. Presten respectfully requests that the Board:

1. Grant reconsideration
2. Set aside the January 20, 2026 Decision
3. Adopt a decision finding Mr. Presten substantially incapacitated and entitled to disability retirement

Alternatively, the Board should remand the matter for further proceedings and consideration of all objective medical evidence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel Presten". The signature is fluid and cursive, with the first name "Samuel" written in a larger, more prominent script than the last name "Presten".

Samuel Presten

Date: February 19, 2026

All personal identifiers have been redacted in accordance with CalPERS submission requirements.

CERTIFICATE OF SUBMISSION

I certify that this Petition for Reconsideration was submitted to the CalPERS Board Services Unit on February 19, 2026 via electronic mail in accordance with CalPERS filing instructions.
Samuel Presten