

ATTACHMENT E

THE PROPOSED DECISION

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

In the Matter of the Application for Disability Retirement of:

SAMUEL PRESTEN,

Respondent,

and

DEPARTMENT OF TRANSPORTATION DISTRICT 10,

Respondent.

Agency No. 2024-0309 (Statement of Issues)

OAH No. 2024120163

PROPOSED DECISION

Sandy Yu, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 25, 2025.

Austa Wakily, Esq., represented the California Public Employees' Retirement System (CalPERS).

Nina Wasow, Esq., represented respondent Samuel Presten (Presten), who was present at the hearing.

There was no appearance by or on behalf of respondent Department of Transportation District 10 (CalTrans).

The ALJ received testimony and documentary evidence. At the end of the hearing, the record was held open for Presten to submit a letter from Stewart Lonky, M.D., and for Presten and CalPERS to submit briefs as to whether Presten's Exhibits A through G are admissible under the business records exception to the hearsay rule (Evid. Code, § 1271). The due dates for Presten's and CalPERS's submissions were September 8 and September 10, 2025, respectively.

On September 10, 2025, Presten submitted written arguments and a letter dated September 5, 2025 from Dr. Lonky, marked as Exhibit M. On September 17, 2025, CalPERS submitted written objections, marked as Exhibit 17. The submissions were untimely; nonetheless, the ALJ reopened the record on September 24, 2025 to consider them in connection with the disputed exhibits.

In an order dated September 24, 2025, the ALJ ruled that the business records exception to the hearsay rule was not established and admitted Presten's Exhibits A through G solely as hearsay evidence under Government Code section 11513.

On October 10, 2025, on her own motion, the ALJ issued a protective order sealing Exhibits 8, 10, 12, A through G, and J.

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SUMMARY

Presten applied for industrial disability retirement from his position as an Equipment Operator II with CalTrans. CalPERS determined Presten was ineligible for disability retirement because he was not substantially incapacitated from the performance of his usual job duties, and Presten appeals that determination. At the hearing, Presten did not meet his burden of proving that he was substantially incapacitated from the performance of his usual job duties. Therefore, Presten's appeal is denied.

FACTUAL FINDINGS

Background and Procedural History

1. In November 2011, Presten began working for CalTrans as an Equipment Operator. After a few years, he was promoted to Equipment Operator II. By virtue of his employment with CalTrans, Presten is a state miscellaneous member of CalPERS subject to Government Code section 21150. "State miscellaneous member" includes all members employed by the state and university, except National Guard, industrial, patrol, state peace officer/firefighter, and state safety members." (Gov. Code, § 20380.) Presten has the minimum service credit necessary to qualify for retirement.

2. On April 23, 2023, Presten signed an application for industrial disability retirement. In filing the application, Presten claimed disability on the basis of a pulmonary condition (disseminated coccidiomycosis). Presten wrote that the condition occurred on September 20, 2016 from breathing in dust "while digging and clearing a boxed culvert" as part of his job duties. (Exh. 3 p. A34.) Presten further wrote that due

to his condition, he experienced “muscle wasting, joint pain, chronic fatigue, [and] difficulty [with] breathing,” resulting in limitations with lifting heavy objects and going into high elevations. (*Ibid.*) In support of his application, Presten submitted medical records and reports, including reports prepared by Kheng Xiong, P.A., Karthikeya Devireddy, M.D., and Dr. Lonky.

3. On August 9, 2023, at CalPERS’s request, Omar Tirmizi, M.D., conducted an independent medical examination of Presten. As part of the examination, Dr. Tirmizi interviewed Presten, performed a physical examination of him, and reviewed his medical records. Dr. Tirmizi prepared an initial report and two supplemental reports.

4. In early 2024, Presten and a CalTrans Maintenance Supervisor signed a “Physical Requirements of Position/Occupational Title” form (Physical Requirements form) and submitted it to CalPERS. According to the Physical Requirements form, when working as an Equipment Operator II, Presten’s usual job duties involve the following daily activities: (1) “constantly” (more than 5 hours) driving; (2) “frequently” (2.5 to 5 hours) interacting/communicating with co-workers, lifting/carrying up to 10 pounds, bending and twisting his neck and being exposed to dust, gas, fumes, or chemicals; and (3) “occasionally” (31 minutes to 2.5 hours) lifting 11-25 pounds, standing, walking, twisting his waist, pushing and pulling, power grasping, operating hazardous machinery, and being exposed to excessive noise and extreme temperatures. (Exh. 13.)

5. After reviewing Presten’s medical records and reports, CalPERS determined that Presten was not substantially incapacitated from the performance of his job duties as an Equipment Operator II with CalTrans. On March 12, 2024, CalPERS notified Presten that his application for disability retirement was denied. On March 20, 2024, Presten timely appealed the denial of his disability retirement application and requested an administrative hearing.

6. On August 13, 2024, Sharon Hobbs, Chief, Disability and Survivor Benefits Division for CalPERS, filed the Statement of Issues in her official capacity. According to the Statement of Issues, the issue on the appeal is limited to “whether at the time of the application, on the basis of pulmonological condition (disseminated coccidiomycosis), Presten was substantially incapacitated from the performance of his duties as an Equipment Operator II for CalTrans.” (Exh. 1, p. A3.)

Hearing

CALPERS’S CASE

Dr. Tirmizi’s Testimony

7. CalPERS called Dr. Tirmizi to testify in support of CalPERS’s determination. Dr. Tirmizi is licensed to practice internal medicine in California. He has served as a qualified medical evaluator for CalPERS for many years. At the hearing, Dr. Tirmizi’s testimony was consistent with his reports.

8. In his initial report dated October 7, 2023, Dr. Tirmizi concluded Presten did have an actual or present pulmonary impairment that would rise to the level of substantial incapacity. Dr. Tirmizi based his conclusion on: (1) his physical examination of Presten, which included findings of normal oxygen saturation and resting respiration; (2) Dr. Lonky’s finding that Presten had no pulmonary impairment; (3) Dr. Tirmizi’s review of Presten’s chest computed tomography (CT) scan results showing normal pulmonary parenchyma (i.e., lung tissue); and (4) Dr. Tirmizi’s review of Presten’s pulmonary study test results showing his titers have normalized in 2020. Although Dr. Tirmizi concluded Presten would likely require lifelong antifungal therapy, he determined Presten was not substantially disabled by any pulmonary condition.

9. Dr. Tirmizi noted that during his review of the medical records, CalPERS sent him a portion of Dr. Lonky's January 11, 2020 evaluation report. In a supplemental report dated November 8, 2023, Dr. Tirmizi reviewed the entirety of Dr. Lonky's January 11, 2020 evaluation report, which discussed Dr. Lonky's reevaluation of Presten on that date. In that report, Dr. Lonky found that Presten's pulmonary function studies remained normal and thus, concluded that there was no pulmonary impairment. Dr. Tirmizi concluded that in the absence of any new and further opinions rendered by Dr. Lonky or any new testing contrary to previous reports, Dr. Tirmizi's opinion remained unchanged.

10. In his second supplemental report dated January 12, 2024, Dr. Tirmizi reviewed additional medical records consisting of a report by Kheng Xiong, P.A. In his report, Mr. Xiong diagnosed Presten as having disseminated coccidioidomycosis, weakened immune system, and poor physical condition. Based on his review of Mr. Xiong's report, Dr. Tirmizi concluded that his opinion remains unchanged because there were no medical records supporting Mr. Xiong's diagnoses.

11. On cross-examination, Dr. Tirmizi testified that he did not review Dr. Lonky's most recent evaluation reports dated March 14, 2025, and August 5, 2025, and Presten's most recent pulmonary function test dated August 31, 2023. However, in his evaluation report dated March 14, 2025, Dr. Lonky reviewed Presten's 2023 pulmonary function test results, which showed "mild-to-moderate obstructive pulmonary impairment," and thus, concluded that these results were consistent with previous findings. (Exh. F, p. B166.) In his evaluation report dated August 5, 2025, Dr. Lonky reviewed Presten's echocardiogram and found "development of some degree of left ventricular hypertrophy," but ventricular hypertrophy is not a condition listed on Presten's application. (Exh. G, p. A171.)

PRESTEN'S CASE

Presten's Testimony

12. Presten is 55 years old who worked for CalTrans from November 2011 to October 2019.

13. On September 6, 2016, Presten was assigned to dig a culvert under the northbound I-5 Freeway at the Laguna Seca crossing. While he was digging, he was exposed to dry dust. A few weeks later, he was diagnosed with pneumonia, and he was unable to return to work due to a high fever, muscle fatigue, and a significant loss of weight.

14. On October 3, 2016, Presten was admitted to Kaiser Permanente Medical Center's emergency room and was diagnosed with disseminated coccidiomycosis. After three days at Kaiser Permanente Medical Center, he was discharged with a high dose of oral Diflucan for treating coccidioidomycosis. As a result of taking Diflucan, he lost his hair and weight, and he experienced fatigue and muscle weakness.

15. In November 2016, Presten returned to work for CalTrans with work restrictions: no lifting over 10 pounds, no climbing, no standing over 30 minutes, and no bending. However, after a while, his employer could no longer accommodate his work restrictions. In addition, Presten's symptoms had worsened, and he was not physically able to perform strenuous duties without pain. By October 2019, Presten stopped working for CalTrans.

16. Presten filed a workers' compensation claim for his pulmonary condition. Dr. Lonky evaluated Presten for his workers' compensation claim and issued reports dated May 26, 2017, January 26, 2019, January 11, 2020, September 10, 2021, October

8, 2022, March 14, 2025, and August 5, 2025. Presten's workers' compensation claim was approved, and Presten contends the approval proves he is disabled for retirement purposes.

17. Presten disputed Dr. Tirmizi's findings. He testified that his appointment with Dr. Tirmizi was short. He contended that Dr. Tirmizi took his vitals and asked him questions about his medical history but did not have him perform any additional physical exertion tests.

18. Presten testified that prior to his diagnosis of disseminated coccidiomycosis, he considered himself healthy and strong. He reported he now experiences constant fatigue, shortness of breath, joint pain, and brain fog. He contended that with his current condition, he is unable to perform his job duties as an Equipment Operator II.

Dr. Devireddy's Testimony

19. Dr. Devireddy is a licensed to practice internal medicine. He has been treating Presten since 2019. Dr. Devireddy explained that the presence of normal titers in Presten's pulmonary study test does not indicate recovery to a baseline compatible with workforce reintegration. Dr. Devireddy testified Presten continues to experience symptoms from disseminated coccidioidomycosis, such as fatigue, shortness of breath, and joint pain, and he requires long-term antifungal therapy. Dr. Devireddy contended that his clinical observations are consistent with Presten's subjective symptoms.

20. Dr. Devireddy opined that Presten remains permanently disabled due to disseminated coccidioidomycosis. In his letter dated August 13, 2025, Dr. Devireddy stated "[s]ince the onset of his illness, Presten has had recurrent fatigue, generalized weakness, and exertional dyspnea. He is unable to walk more than two to three blocks

without experiencing significant shortness of breath, and he requires [two] liters of supplemental oxygen via nasal cannula for any extended physical activity. . . He is also intolerant of any elevation or incline or elevation such as driving up to the mountains, as this exacerbates his oxygen desaturation and respiratory distress.” (Exh. J, p. B197.) Dr. Devireddy also opined that Presten cannot perform many of the job duties due to fatigue, shortness of breath, and joint pain caused by disseminated coccidiomycosis.

Analysis of Evidence

21. The evidence does not support the finding that Presten was substantially incapacitated from the performance of his usual job duties as an Equipment Operator II at the time he filed his industrial disability retirement application. Although Presten presented subjective complaints, including fatigue, shortness of breath, and joint pain, Dr. Tirmizi’s opinion that the objective evidence does not support a finding that Presten is substantially incapacitated from the performance of his job duties due to his pulmonary condition is most persuasive. Dr. Tirmizi conducted a physical examination and reviewed Presten’s extensive medical records, including objective test results showing normal pulmonary parenchyma and normal titers.

22. On the other hand, Dr. Devireddy’s opinions were not supported by any objective findings to demonstrate that Presten is substantially incapacitated from the performance of his job duties. Dr. Devireddy opined that Presten would not be able to meet the physical requirements of his job due to fatigue, shortness of breath, and joint pain. However, Presten’s fatigue, shortness of breath, and joint pain are subjective complaints. The pulmonary function study and chest CT scan results, which are objective tests, demonstrated that Presten’s lung capacity was normal, which Dr. Tirmizi explained would not limit his ability to perform his job duties.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Presten bears the burden to prove by a preponderance of the evidence he is eligible for disability retirement. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

2. To be eligible for disability retirement, an applicant must prove that, at the time he applied, he was "incapacitated physically or mentally for the performance of [his] duties." (Gov. Code, § 21156, subd. (a)(1).) "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by CalPERS based on competent medical opinion. (Gov. Code, § 20026.) "Incapacitated for the performance of duty" means "the substantial inability of the applicant to perform [his] usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877.)

3. To meet this burden, Presten must submit competent, objective medical evidence to establish that, at the time of his application, he was permanently disabled or incapacitated from the performance of his job duties as an Equipment Operator II for CalTrans.

4. Findings issued for the purposes of workers' compensation are not evidence that Presten's injuries are substantially incapacitating for the purposes of

disability retirement. (*Smith v. City of Napa*, (2004) 120 Cal.App.4th 194, 207; *English v. Bd. of Administration of the Los Angeles City Employees' Retirement System* (1983) 148 Cal.App.3d 839, 844; *Bianchi v. City of San Diego*, (1989) 214 Cal.App.3d 563.) As observed in *Bianchi*, a "[workers' compensation] proceeding decides whether the employee suffered any job-related injury. If that injury results in some permanent residual loss (i.e., loss of normal use of a body part, impaired earning capacity, or some other competitive handicap in the labor market), the [workers' compensation appeals board (WCAB)] awards the employee a permanent disability rating. [Citations] Retirement boards, on the other hand, focus on a different issue: whether an employee has suffered an injury or disease of such magnitude and nature that he is incapacitated from substantially performing his job responsibilities. [Citations] Because of the differences in the issues, 'a finding by the WCAB of permanent disability, which may be partial for the purposes of workers' compensation does not bind the retirement board on the issue of the employee's incapacity to perform his duties.' [Citation]." (*Bianchi v. City of San Diego*, (1989) 214 Cal.App.3d at 567.)

Disposition

5. When all the evidence is considered, Presten failed to establish that he was substantially incapacitated from the performance of his usual job duties as an Equipment Operator II at the time he filed his industrial disability retirement application. Presten did not present any objective medical evidence to dispute the test results from his pulmonary function studies and chest CT scan and to establish he is substantially disabled by his pulmonary condition. Furthermore, Dr. Tirmizi's opinion that Presten is not substantially incapacitated from the performance of his job duties due to his pulmonary condition is more convincing because it is supported by his

physical examination and review of objective test results. Therefore, Presten is not entitled to industrial disability retirement.

ORDER

Respondent Samuel Presten's application for industrial disability retirement is denied.

DATE: 10/16/2025

Sandy Yu

SANDY YU

Administrative Law Judge

Office of Administrative Hearings