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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Allum  
**Respondent:** Secretary of State for Justice  
**Before:** Employment Judge M Martin

## JUDGMENT ON RECONSIDERATION

The Judgment of the Tribunal is that the Claimant's application for a reconsideration of the Judgment given on 30 June 2017 and dated 14 July 2017 (written reasons having been sent to the parties on 25 August 2017) is refused. The Judgment dated 14 July 2017 is hereby confirmed.

## REASONS

- 1 On 7 September 2017 the Claimant's representative made an application for a reconsideration of the Judgment dated 14 July 2017.
- 2 As part of that application, the Claimant's representative attached a report from the Claimant's GP dated 20 July 2017 in response to a letter from the Claimant's representative dated 14 July 2017. Their application also referred to two cases namely the leading case of *Ladd v Marshall [1954] EWCA CIV 1* and *Outasight VB Ltd v Brown [2014] UKEAT/0253*.
- 3 The Tribunal considered Rules 70 – 72 of Schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
- 4 The Tribunal also considered the Claimant's application for reconsideration and the documents attached to that application, together with the Respondent's response to the same dated 20 September 2017.
- 5 Both parties agreed that the Tribunal could determine the application without a hearing.

6 This Tribunal considered that the first part of the Claimant's application for reconsideration amounted to a request to reconsider evidence already heard by the Tribunal and upon which the Tribunal had already made findings of fact. This Tribunal considered that it was merely an attempt to re-litigate a matter that had already been decided by this Tribunal, effectively in essence an appeal against the Judgment of the Tribunal and not a reconsideration.

7 The second part of the Claimant's application is effectively a request to adduce fresh evidence. In that regard, the Claimant is requesting that the Judgment be reconsidered in the light of a medical report produced by the Claimant's GP on 20 July 2017, following a request by the Claimant's representative after the Judgment had already been given orally by this Tribunal on 30 June 2017.

8 This Tribunal has considered the rules of procedure and the cases referred to earlier in this decision.

9 The Tribunal notes that the case of *Ladd* laid down three conditions for the introduction of new evidence. Firstly it must be shown that the evidence could not have been obtained without reasonable diligence for use at the trial; secondly the evidence if given should have an important influence on the result of the case, although not necessarily be determinative. Thirdly that the evidence must be credible. The case of *Ladd* also made it clear that the circumstances when the Court would grant leave to adduce new evidence must be very rare.

10 The Tribunal also noted the case of *Outasight* and noted that, as stated, there might be cases where the interests of justice would permit fresh evidence to be adduced notwithstanding that the principles laid down in *Ladd* were not strictly met. In that case, the Employment Appeal Tribunal considered cases where circumstances might permit adducing fresh evidence for example where there was an additional factor or mitigating circumstances which meant that the evidence could not be obtained with reasonable diligence at an earlier stage, or where a party was ambushed at the hearing.

11 In this case the Tribunal considers that the report from Dr Campbell, the Claimant's GP could (and possibly should) have been obtained earlier. The fact is that the Claimant or his representative chose not to seek evidence from Dr Campbell. They could have done so. It appears that they could have obtained that evidence relatively quickly and easily, based on how quickly Dr Campbell provided a response to the Claimant's representative's letter. It is noted that Dr Campbell actually produced her report within a week of the request.

12 This Tribunal does not consider that either the Claimant or his representative were ambushed at the hearing on 30 June 2017. The Claimant and his representative were aware of what had to be determined at the Preliminary Hearing, namely whether the Claimant was disabled within the definition of the meaning of disability in the Equality Act 2010. They were also fully aware that it was up to the Claimant to prove that he was suffering from a disability. No evidence has been presented to this Tribunal suggesting that the Claimant could not have obtained this report from Dr Campbell in advance of the Preliminary Hearing, if he or his representative had requested this evidence. Part of the role of the Claimant's representative would be to consider and evaluate the evidence which is being adduced on the issue of disability at the Preliminary Hearing. The onus is

on the Claimant or his representative to adduce any evidence required to prove the issue at the hearing.

13 This Tribunal does not consider that it is in the interests of justice to allow a reconsideration of its judgment on the basis of the introduction of this report at this stage. In that regard, the Tribunal has to take into account the interests of both the Claimant and the Respondent. Paragraph 33 of *Outasight* makes it clear that, in the interests of justice and the public interest, there should be so far as possible be a finality in any litigation - that is what the Judgment on the preliminary issue determined, namely whether the Claimant was disabled within the definition of disability under the Equality Act 2010.

14 In any event, it is noted that Dr Campbell's report is not conclusive about whether the Claimant is suffering from a disability. Dr Campbell makes it clear on several occasions throughout her report that additional expert evidence is required from both an orthopaedic surgeon and a radiologist.

15 This Tribunal considers that the new evidence namely the report of Dr Campbell is simply an attempt to re-litigate an issue which was determined by this Tribunal at the Preliminary Hearing on 30 June 2017 and "get a second bite of the cherry". If the Claimant wanted to rely on this evidence he could have and should have obtained this evidence in advance of the Preliminary Hearing, which was fixed to determine the issue as to whether or not he was disabled.

16 The Tribunal notes that the report obtained from Dr Campbell was obtained outside the usual rules of procedure, following specific questions raised by the Claimant's solicitor. The usual procedure for obtaining any report of this nature would be that the request would be made by way of joint instructions. It is noted that the request from the Claimant's solicitor was made after the Judgment and predicates the request on the basis that the Judgment was wrong, for example the Claimant's solicitor comments "despite my client's evidence, EJ Martin found ..." in that regard the Claimant's solicitor appears to be seeking to obtain medical evidence to usurp the Judgment as opposed to obtaining fresh evidence.

17 By way of obiter comments, the Tribunal notes that the Claimant in this instance has simply chosen his own expert and given his own instructions to that expert. Accordingly, the report has been obtained outside the usual rules without joint instruction and both the parties agreeing an expert. If the judgment was to be varied or revoked, it would require a complete re-litigation of this case with orders having to be made for an agreed expert to be jointly instructed, and then if necessary a further Preliminary Hearing. This would mean that the case would have to be re-litigated entirely which is completely against the interests of justice and the need to ensure that there is finality in cases of this nature. That is particularly concerning here where it is quite clear that this further evidence could have been obtained in advance of the Preliminary Hearing, when the issue of disability was to be determined.

18 For those reasons the Claimant's application for a reconsideration of the judgment dated 14 July 2017 is dismissed.

19 The case will be relisted for a full hearing to determine the claim of unfair dismissal.

Employment Judge Martin

23 November 2017