



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Mable Brown

**First Respondent:** UPS Limited

## **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

1. The Claimant's application for reconsideration of part of the Judgment at the Preliminary Hearing of 24 and 25 May 2018 fails and is dismissed.
2. The Respondent's title is amended to UPS Limited.

### **REASONS**

1. The Claimant applied on 16 July 2018 for 'judicial review' (but accepted as an application for Reconsideration) of the Judgment, in effect that the Tribunal reverse its decision that the Claimant was not disabled, under the terms of s.6 of the Equality Act 2010.
2. By letter of 31 July 2018, the Parties were invited to confirm whether or not they considered that this application could be dealt with, without a hearing and both parties agreed that it could. The Respondent provided written submissions, dated 10 August 2018.
3. Having read the application and those written submissions, I consider that, subject to Rule 72(2) of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 ('the Rules'), it is unnecessary, in the interests of justice, for there to be a hearing.
4. Basis of Claimant's application. The Claimant contends the following:
  - a. That her inability to return to work, due to mental ill-health, indicates the effect on her ability to carry out normal day-to-day activities.

- b. She is suffering a financial penalty as she has been unable, without paying enhanced premiums, to obtain insurance and such insurance is more limited than she previously enjoyed.
  - c. The Respondent is continuing to discriminate against her by failing to implement a return to work plan, due to her mental health, despite the Claimant, with the support of her GP, wishing to return to work. The Respondent has ceased to communicate with the Claimant.
  - d. Since the Preliminary Hearing, the Claimant has self-harmed and is undergoing counselling.
  - e. She has moved to Scotland, to be near her husband, so he may better support her and their children. She nonetheless hopes to make a significant recovery and return to Birmingham.
5. Respondent's Submission. The Respondent had two main reasons for objecting to the application. Firstly, the Tribunal properly considered the Claimant's claim to be disabled, at the Preliminary Hearing, considering all available evidence and applying the correct legal test and that therefore the decision that she was not disabled was correct. Secondly, the Claimant's application contains no meaningful grounds to support her application, or they are irrelevant.
6. The Rules. Rule 70 states that a '*Tribunal may ... reconsider any judgment where it is necessary in the interests of justice to do so.*'
7. The Judgment. The Judgment set out, at paragraph 1 to 14 of the Reasons, the Tribunal's rationale for deciding that the Claimant was not, at the material time, disabled. That full rationale is not repeated here, but is relied on in its entirety. Salient points are:
- a. The medical evidence did not indicate a long-term mental impairment, substantially affecting her ability to carry out normal day-to-day activities [9].
  - b. Her oral evidence contradicted the medical evidence and was not considered credible.
  - c. Such impairment as she did suffer was considered not to meet the 'long-term' requirement and was also a reaction to an adverse event (not 'effect', as in [6]) (**J v DLA Piper UK LLP [2010] UKEAT IRLR 936**).
8. Consideration of the Claimant's submissions. Using the numbering above, I find that 6.b and c. are largely irrelevant to the issue as to

whether or not the Tribunal should have found the Claimant to be disabled. Even if accepted at face value (as they are unsupported by any evidence), they seem to relate to the Claimant's alleged self-declarations to insurers as to her mental state and I refer again to my findings as to her credibility, generally. Secondly, the assertion that while she is willing to return to work (in seeming contradiction to her claims to be suffering severe mental trauma), the Respondent is unwilling to have her return, does not go to providing proof of either the 'long-term' or 'substantial effects' elements of the test. 6.a. is in direct contradiction to c., as she asserts that her mental health does not allow her to return to work, but in c. blames the Respondent's failure to implement a return to work plan for her non-return. None of these issues were raised at the Preliminary Hearing. In respect of d. and e. these events post-date the Hearing and therefore cannot have formed part of the Tribunal's consideration.

9. Conclusions. The application contains no valid grounds, in the interests of justice, for reconsideration of the Judgment. Three of the grounds are matters that could have been raised at the Hearing, but no reason is offered as to why they were not and in any event add little to the issue. Two post-date the Judgment. Crucially, however, the alleged acts of discrimination in this Claim relate to the approximate period March 2016 to August 2017 (her claim having been brought in September of that latter year) and therefore her subsequent medical condition cannot be relevant as to whether she was disabled at the material time, i.e. for the approximate eighteen months before she filed her claim.

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Employment Judge C H O'Rourke

Dated: 17 August 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE