



EMPLOYMENT TRIBUNALS

BETWEEN:

Mr P Murphy
Claimant

and

United Lincolnshire Hospitals
NHS Trust
Respondent

Consideration of An Application for Reconsideration

Held at: In Chambers

Before: **Employment Judge Clark**

DECISION

1. The Claimant's application for reconsideration of the tribunal's judgment is refused.

REASONS

1. By an email dated 12 November 2018, the claimant applied for a reconsideration of the reserved judgment sent to the parties with reasons on 29 October 2018.
2. Such an application falls to be considered under rules 70-72 of schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. By rule 71, an application for reconsideration must be made in writing within 14 days of the decision being sent setting out why reconsideration of the original decision is necessary. The claimant's application was therefore made in time.

3. The challenges raised by the claimant concern his dissatisfaction with three areas of fact finding made by the tribunal. They are in relation to Mr Murphy's level of dexterity, coordination and fine motor skills throughout the relevant period, those of Mr Ortonowski to the extent that what happened to him following his own stroke was relevant to the claimant's circumstances and the nature of his practice having more of a bias towards endoscopy.
4. By rule 70, the tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. Under the present rules, there is now a single threshold for making an application, that is, that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand. The challenges raised by the claimant relate to the facts found and assert that the tribunal should have arrived at a different conclusion. That in itself will rarely satisfy the interests of justice.
5. If I conclude the interests of justice were engaged, by rule 71(1) I am then to give initial consideration to the prospects of the application which determines whether it is necessary to seek the views of the respondent and whether the matter can be dealt with on paper or at a further hearing. Where the application can be said to carry no reasonable prospects of being varied or revoked, the rules dictate that I shall refuse the application without being required to consider the matter further.
6. In my judgment I am not satisfied that the interests of justice require the reconsideration and in any event, to the extent that the matters raised can be said to do so, there is no reasonable prospect of the decision being varied or revoked. I am satisfied that the findings of fact unanimously reached by the tribunal were facts it was entitled to reach on the evidence presented to it, particularly in respect of the extent to which any delay in assessment may have materially affected the claimant's motor skills or practical functioning in surgery and his ability to undertake endoscopy. Further, we were fixed with the findings of fact already reached in determining the claimant's status as a disabled person. The evidence in respect of Mr Ortonowski was limited from both parties and we made findings as we felt were necessary and able to. This was part of the claim on which no closing submissions were made to us. We nevertheless, dealt with it and, in any event, the similarities or differences between Mr Ortonowski and the claimant's abilities do not alter the ultimate conclusion that it was not reasonable for the respondent to have to adjust the claimant's duties to remove the requirement to carry out surgery and to turn his role into one purely undertaking endoscopy.
7. Consequently, I refuse the application for reconsideration.

Case number: 2601000/2016
2601523/2016

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Employment Judge
Date: 19 December 2018

JUDGMENT SENT TO THE PARTIES ON

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AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNALS