



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

(1) MISS P SCOTT

AND

Respondent

(1) CORDANT PEOPLE LIMITED

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF ON: 26TH JUNE 2018

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANTS:- WRITTEN REPRESENTATIONS

FOR THE RESPONDENT:- WRITTEN REPRESENTATIONS

RECONSIDERATION JUDGMENT

The judgment of the tribunal is that:-

The application to vary or revoke the Judgment is dismissed.

REASONS

1. At a Preliminary Hearing held on 3rd May 2018 I decided that, based on the evidence before me, the claimant did not fulfil the statutory definition of disability. The claimant now seeks a reconsideration of that decision, an application which the respondent opposes.

2. The essence of my previous decision was that whilst the claimant satisfied the statutory definition for the period December 2016 to August 2017, there was insufficient evidence of a significant effect on her normal day to day activities for the period outside that time, and no medical evidence which would allow me to make findings about any deduced effect (i.e. the effect if the medication had not been prescribed). As is set out in the Judgment this conclusion was based not simply on the absence of medical evidence but on the claimant's own oral evidence, which the respondent did not dispute and which I accepted.

3. The claimant has now supplied further medical evidence covering the period before November 2016 and in her accompanying e-mail states: "*As I explained my mental health was in turmoil for months before the 9 months' worth of documents for the last hearing. As you can see my first issue of sertraline was September 2015, by October I had the first stress breakdown (stress acute reaction) due to work! I never recovered, all doctors' notes and unfit for work notes were given to my direct manager in Cordant. I trust that this satisfies the minimum 1 year requirement...*" It is not in dispute that the claimant's references to the newly disclosed medical evidence are accurate.

4. The respondent submits that the application should be dismissed, essentially for two reasons. Firstly it submits that there is no evidence that, and the claimant does not assert that, the medical records could not have been obtained prior to the previous hearing and used in evidence if the claimant had wished to do so; and that she has not therefore met the well known Ladd v Marshall test, that the evidence could not with reasonable diligence have been obtained for use at the original hearing, that it was relevant and would have had an important effect on the decision, and was apparently credible. Secondly they contend (submissions that are also relevant for the second and third elements of the test set out above) that the original decision was not based simply on the absence of evidence, but the oral evidence the claimant herself gave at the hearing. They summarise that evidence in relation to the period covered by the new medical evidence: "She stated on numerous occasions that the condition was manageable prior to December 2016.."and further submit that in any event the new medical evidence is still not sufficient to allow the tribunal to make any

assessment of the deduced effect without which the tribunal could not have concluded that the claimant was a disabled person.

5. As is set out at paragraph 2 of the original decision I accepted the claimant's evidence that the events of December 2016 did not come out of the blue but were the culmination of a process that had begun some eighteen months earlier; but that the difference was that it was in December 2016 that she had been unable to cope, which was not the case prior to that point. It followed that on the evidence before me there was insufficient evidence of there being a substantial effect on the claimant's normal day to day activities prior to December 2016, and no medical evidence which would have allowed me to make any findings about the any deduced effect. In my judgement even if the new evidence were to be admitted it would not alter that position in the light of the oral evidence the claimant has already given. In reality it does no more than confirm the truth of her oral evidence, which I had already accepted as being true in any event.
6. It follows that in my judgement there is no reasonable prospect of the decision being varied or revoked in the light of the new evidence.

EMPLOYMENT JUDGE CADNEY

Dated: 26th July 18

ORDER SENT TO THE PARTIES ON

.....3 July 2018.....

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS