



EMPLOYMENT TRIBUNALS

Claimant: Mr A Withey

Respondent Nu-Tech Services Ltd t/a Nu-Tech Electrical

Heard at: Cardiff **On:** 30th August 2019

Before: Employment Judge P Cadney

Members:

Representation:

Claimant: Written Representations

Respondent:

RECONSIDERATION JUDGMENT

The judgment of the Tribunal is:

The application to vary or revoke the Judgment is dismissed.

REASONS

1. On 31st May 2019 following an oral hearing I dismissed the claimant's claims on the basis they were out of time and the tribunal did not have jurisdiction to hear them.
2. The Claimant has submitted a Reconsideration Application which sets out medical evidence which he did not present at the hearing itself. He has copied an email of 28th May 2019 (sent prior to the hearing) which refers in general terms to his suffering "*ongoing moderate to severe depression and how I'm unable to focus on any situation never mind meet a deadline.*" This is said to have been the situation both before the original deadline for

submission of the ET1 and in relation to compliance with the case management orders. He has forwarded a page from a medical report form for Employment and Support allowance from an assessment on 21st September 2018, and later forwarded longer extracts from the same report. These confirm that the claimant was suffering significant mental health issues at the time. However the last sentence in the section "Evidence Which Has Led to this Opinion" states "*Overall some functional disability is likely with social interaction, however no significant functional disability is likely with other mental health areas*".

3. This is obviously new evidence on which the claimant is seeking to rely, and in terms of my decision (see *Ladd v Marshall* 1954 3 All ER 745) I obviously accept that this evidence is credible. However, for the reason referred to in the extract quoted above I am not persuaded that it would have had an important influence on the hearing, in that it does not help answer the critical question of why the claimant was able to obtain the ACAS EC certificate in time but not to have submitted the claim in time thereafter. If anything, it undermines the claimant's case. Moreover, there is no evidence that it could not have been obtained for use at the original hearing with reasonable diligence. In my earlier decision I accepted in general terms that the evidence that the claimant had produced clearly pointed to his suffering difficulties with his mental health during this period. However, in my judgement even after reconsideration of this further medical evidence I am of the same view as expressed in paragraphs 10 and 11 of the earlier decision. Whilst it is hard not to be sympathetic to the claimant there is no proper evidential basis for concluding that it was not reasonably practicable to have presented the relevant claims in time. Equally the reasoning in relation to the discrimination claim is unaffected by this evidence.
4. It follows that I am not persuaded that it is in the interests of justice to revoke or vary my earlier decision.

Employment Judge P Cadney
Dated: 30th August 2019

JUDGMENT SENT TO THE PARTIES ON

.....6 September 2019....
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS