



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms H Jones

**Respondent:** The City and County of Cardiff

**UPON APPLICATION** made by emails from the Claimant, dated 11 and 13 February 2020, to reconsider the Judgment sent to the parties on 17 January 2020 (“**Judgment**”), and the Reasons for the Judgment sent to the parties on 30 January 2020 (“**Reasons**”), under rule 71 of the Employment Tribunals Rules of Procedure 2013 (“**Rules**”).

## JUDGMENT

The Claimant’s application for reconsideration is refused and the Judgment and Reasons are confirmed.

## REASONS

### Background

1. The Claimant's emails of 11 and 13 February 2020, and the attachments to the latter emails set out her application for reconsideration of the Judgment and the Reasons. In that Judgment and those Reasons I had concluded that Claimant’s claims had been brought out of time and should be dismissed.

### Issues and Law

2. Rule 70 provides that reconsideration of a judgment will take place where the Employment Judge considers that it is necessary in the interests of justice to do so.
3. Rule 71 provides that applications for reconsiderations of judgments should be presented in writing within 14 days of the date on which the written record was sent to the parties and should explain why reconsideration is necessary. The Claimant’s emails satisfied those

requirements and therefore a valid application for reconsideration was made.

4. Rule 72(1) notes that an Employment Judge shall consider any application for reconsideration made under rule 71, and that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked then the application shall be refused and the Tribunal shall inform the parties of the refusal. Alternatively, rule 72 sets out the process that is then to be followed for further consideration of the application.
5. Rule 70 specifies only that one ground for reconsideration; where, "*it is necessary in the interests of justice to do so*". That was a change from the provisions relating to reviews of judgments under the previous Rules issued in 2004, which specified, in Rule 34, certain specific grounds for review. These included, at Rule 34(3)(d), the availability of new evidence, which was at the core of the Claimant's reconsideration application. In the circumstances I considered it appropriate to have regard to case authorities which dealt with applications under that ground.
6. In that regard, it has been long established, following the case of Ladd –v- Marshall [1954] 1 WLR 1489, that the party making the application needs to be able to show that the new evidence could not have been obtained with reasonable diligence for use at the original hearing, was relevant and would probably have had an important influence on the hearing, and was apparently credible. That requirement was largely reflected within the wording of Rule 34(3)(d) of the 2004 Rules which allowed a review where "*new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time*".

#### The Judgment and Reasons

7. In the Judgment, I concluded that the Claimant's claims of disability discrimination and unfair dismissal had been brought out of time and that it was not appropriate to allow the claims to be pursued applying the relevant tests for considering extensions of time.
8. The date of the Claimant's dismissal, which was also the act complained of for the purposes of her discrimination claim, was 27 May 2018. In compliance with the three-month time limit, she should therefore have made contact with ACAS for the purposes of early conciliation by no later than 26 August 2018. However, she did not make that contact until 6 October 2019, i.e. some thirteen months out of time.
9. The Claimant's contention with regard to her lack compliance with the time limits was that her medical condition, taken together with some significant life events which occurred during the thirteen-month period, meant that she had not been able to pursue matters before the Tribunal during that period.
10. Having considered the documentary evidence produced to me, and the Claimant's oral evidence, I concluded that the various life events, whilst no doubt having a significant impact on the Claimant, should not have

prevented her from taking steps to pursue her tribunal claims at an earlier date. I noted that she had been in a position to manage several civil and family court hearings and to apply for, and initially successfully procure, jobs during the period.

11. With regard to the Claimant's health, I accepted that her mental health condition had had an impact upon her ability to manage her affairs, including progressing her tribunal claims, such that I concluded that it may not have been reasonably practicable for her to have brought her unfair dismissal claim within the initial three-month period. However, I considered that, later on, and certainly within the period of May to July 2019, she had been in a position to pursue matters, and that her failure to do so meant that her claims had not been progressed sufficiently swiftly to justify an extension of time.
12. The evidence in support of that conclusion was the report of a consultant psychiatrist on 30 July 2019, in which it was noted that the Claimant's mental state at that time was "*stable*", and that it had been stable for about three months. In fact, on looking at the report again for the purposes of the Claimant's reconsideration application, I can see that the report recorded the Claimant's own observation that she had been stable for about three months, and was not the observation of the psychiatrist.

#### The Application

13. The Claimant's emails noted that her application for reconsideration was based on the provision of additional evidence in the form of a letter from her GP dated 3 February 2020, and an extract from her GP's medical notes, summarising her medical history.
14. The letter confirmed that the Claimant had been seen in January 2019 when she had noted "*a lack of motivation and some low mood and negative thoughts*", and had been reviewed in February 2019 when "*she was feeling better and less tearful*". The letter then noted that the Claimant had been seen in April 2019 when she, "*was very upset due to the withdrawal of a job offer and her relationship had broken down*". The letter went on to record that the Claimant's "*sleep was poor, she was not eating and she was drinking excessively*". It recorded that on 2 April 2019, "*a police welfare check was done owing to concerns about [the Claimant's] mental health*", and that she had been seen on 9 April 2019 when "*she remained very low and was also suffering with anxiety*".
15. The letter went on to confirm that the Claimant had been reviewed on further occasions in April 2019 when she "*remained low, tearful and was drinking excessively*". It also noted that the Claimant had seen the surgery's mental health specialist practitioner at the end of April 2019, at which point she "*felt that her life was hell*". The letter went on to note that "*later in the year [the Claimant's] mental health had improved and her alcohol consumption reduced to safe levels*".
16. The notes do not record all the occasions referred to in the GP's letter and only record a "*telephone encounter*" with a friend of the Claimant on 2 April 2019, which noted that the police had visited and had felt that the Claimant

did not need medical attention; and an “*in-house counselling first appointment*” on 30 April 2019.

Conclusions

17. With regard to the Claimant’s contention that additional evidence justified reconsideration, I considered the guidance provided by the long-established case of Ladd, that the party making the application needs to be able to show that the new evidence could not have been obtained with reasonable diligence for use at the original hearing, would probably have had an important influence on the hearing, and was apparently credible.
18. In that regard, having considered the Claimant’s contentions, whilst the letter from the GP was only obtained on 3 February 2020, there was nothing to suggest that it could not have been obtained previously with reasonable diligence. Applying the direction provided by the Ladd case, it was not therefore appropriate for me to consider the contents of the letter and notes. However, for the reasons I set out below, their contents would not, in any event, have had any influence on the hearing.
19. As I noted in my Reasons, the Claimant appeared to enjoy a period of stability as far as her mental health was concerned in the three-month period of May, June and July 2019. That was recorded in the psychiatrist’s report as having been the Claimant’s own observation of her mental health at the time. The letter and notes, whilst indicating that the Claimant’s health was impacting upon her in the month of April 2019, does not make any reference to any issue arising in the months of May, June or July 2019, or indeed any period thereafter. Even if, therefore, account is taken of a period of time after April when the Claimant’s mental health condition may have continued to have had an impact upon her, the evidence produced does not undermine the conclusion that, for the relevant three-month period, or at least a material part of it, the Claimant’s mental health was stable.
20. Overall therefore, I did not consider that there was any reasonable prospect of the original Judgment being varied or revoked and I therefore concluded that the Claimant’s application for reconsideration should be refused.

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Employment Judge S Jenkins

Date: 27 February 2020

JUDGMENT SENT TO THE PARTIES ON 5 March 2020

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FOR THE TRIBUNAL OFFICE