**Case No : 2200163.2019**

# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms Sabrina Tomassetti**

**Respondent:** **Liquidity Services Ltd**

**Employment Judge Hildebrand**

# JUDGMENT ON APPLICATION FOR RECONSIDERATION

**The application for reconsideration is refused on the grounds that it stands no reasonable prospect of success.**

## REASONS

**1.** The Claimant applied on 24 March 2020 to the Tribunal for reconsideration of the judgment dated 22 August 2019 and sent to the parties on 4 September 2019 following a hearing on 31 July 2019. The Claimant did not copy her application to the Respondent.

**2.** When the application was referred to me on 9 July 2020 I directed that it be copied to the Respondent. The Respondent has helpfully responded promptly to the application.

**3.** The application is made following an appeal dated 16 October 2019 against the judgment which led to an order dated 19 February 2020 sealed on 4 March 2020. The order noted that further evidence had been appended to the Notice of Appeal and stayed the Appeal to give the Claimant an opportunity to apply out of time for reconsideration of the Judgement.

**4.** The Claimant applies, as stated above, on 24 March 2020. She appends documents to her application. I understand those documents to be those appended to her Notice of Appeal. Three documents are produced. One has been described as " Medical Report Missing Period." The document is a print of the medical file of a GP, Dr Elizabeth Barthes-Wilson printed on 11 October 2019. It covers a period from 2005 to 2006. It records counselling in June 2005, a panic attack on 15 August 2005 and a psychiatric referral on 19 January 2006. On 14 September 2005 it is recorded that the Claimant has a history of panic attacks, usually when she goes on public transport. The panic attacks were reviewed on 10 October and 19 December 2005, and on 26 January and 16

February 2006. The final review is 9 March 2006 when the record states: " Says things stable, feels well, only one panic attack in last few weeks." The note on 16 February 2006 records: " Med 3 given until 31/03/2007. Has appointment with psychiatry mane (sic) "

**5.** A further document appended to the application is a form Med 3 signed by Dr Patel. It is dated 6 September 2006. The claimant is to refrain from work for 13 weeks. The diagnosis is claustrophobia and anxiety.

**6.** The third document appended to the application is a letter dated 12 December 2006 from the London Borough of Lambeth notifying rates of Housing Benefit for 2005 and 2006.

**7.** The application is three pages of text with an attached copy of the case of Chacon Navas Case C 13-05 in the Court of Justice of the EU. There is also attached advice and guidance from the EHRC.

**8.** The first point made in the application is that the EAT order gave leave for an application for reconsideration to be made out of time. I do not understand that to be the effect of the EAT order. The EAT was as far as I can see indicating to the Claimant that, if the issue related to fresh evidence, the correct course was to apply for reconsideration to adduce that evidence, the timing of the application being a matter for the Employment Tribunal. Accordingly part of my consideration of the application should deal with whether there is a reasonable prospect of the additional material being accepted.

**9.** In summary therefore the application for reconsideration compromises an application to adduce fresh evidence and asserts that on the basis of that evidence a different conclusion would be appropriate. The second limb of the application is that the outcome is incorrect at law in light of Chacon Navas. The second limb appears to be a second attempt to argue the application. This would appear to be more appropriate for appeal than for reconsideration.

**10.** The Respondent resisted the application. The points made are clearly expressed. The Respondent does not find any adequate explanation for the late appearance of the material relied on. the Respondent disputes that physical disability and past disability form any part of the Claimant's case. Even if accepted the Respondent asserts the material provided dates from 2005 to 2007, that is more than a decade before the employment and of no relevance to the issue determined.

**11.** The Rules of Procedure require initial consideration of an application for reconsideration to identify if it stands no reasonable prospects of success. The relevant provisions of the rules dealing with reconsideration are set out below:

## *RECONSIDERATION OF JUDGMENTS*

**Principles**

**70.** A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment

where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

**Application**

**71.** Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

**Process**

**72.**—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

**12.** Dealing with the fresh evidence now produced, I accept the relevance of the issues identified by the Respondent, namely why was the material now produced not available when the preliminary hearing took place, is it relevant to the issues and if relevant is it likely to be determinative? I also acknowledge the importance of finality in litigation.

**13.** I find the material explaining how the documents now produced came to light is unsatisfactory. The medical notes are said to have been found by the medical practitioner in October. No insight is given into the time of any requests for the information and any reason given in the first instance for the unavailability of the material. The Claimant had professional representation until shortly before the hearing in July. The contention that the doctor produced the documents cannot stand for the Lambeth letter. The document signed by Dr Patel appears to come from a different practice. The implication appears to be that the Claimant has now produced further documents in her possession.

**14.** For the proper assessment of the whether the interests of justice outweigh the importance placed on finality in litigation the Claimant must establish the factual circumstances surrounding the late production of documents. In my conclusion she has manifestly failed to supply the relevant information on which such a ruling could be made.

She has not explained what enquiries were made before the hearing bundle was produced. She has not explained what further enquiries were made after the preliminary hearing. I have no information on which to judge the reasonableness of her actins in producing these documents long after the hearing. I therefore find that she has no reasonable prospect under Rule 72(1) of varying the original decision by reliance on these documents.

**15.** Further I was not able to find that the material produced was relevant to the issue I had to determine. Past disability and physical disability were not issues determined in my ruling. The material produced is a decade prior to the period I had to consider. As the Respondent observes, the period of the Claimant's absence from work in 2005-2006 was not disputed in the July hearing.

**16**. For these reasons I do not accept that the material now produced is relevant to he issues I had to consider. It follows that it could not have been determinative.

**17.** Finally I turn to the capabilities of the Claimant. I endeavoured as I always do to show her every consideration as a litigant in person. She is an intelligent and capable person. She has lived in England for many years. I recall her understanding the issue I had to decide and contributing extensively to the hearing, which was conducted in a courteous and professional fashion. I did not detect any deficiency of understanding on her part and she received the explanations and consideration appropriate to all litigants in person. I do not recall her stating that she had asked for medical notes which had not been produced to her or that she had an outstanding request for those notes. She stated some notes from her earlier medical history were missing which her GP should have considered. She gave no insight into how that had happened or what steps had been taken to obtain the notes.

**18**. I conclude that in accordance with Rule 72(1) the application stands no reasonable prospect of success and it is therefore refused.

Employment Judge Hildebrand

Date 19 July 2020

JUDGMENT SENT TO THE PARTIES ON

20/07/20

FOR THE TRIBUNAL OFFICE

**Note**

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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