



EMPLOYMENT TRIBUNALS

Claimant: Mr J L Sargent

Respondent: B&Q Plc

JUDGMENT

The claimant's application dated 12 February 2020 for reconsideration of the judgment sent to the parties on 3 February 2020 is refused.

REASONS

The claimant's application for a review, received by email on 12 February 2020, stated as follows:

“During my hearing I was asked by you if there had been any reason why my ET1 form had not been submitted in time. On the day I failed to recall a significant event which occurred during this time period.

On the 21/1/2019 my common law father in law Dr Peter Jackson passed away at home after a long illness. His memorial service was on 28/2/2019. His loss devastated the family and they were prioritised above all else.

The ET1 was completed by 8/2/2019 but due to our loss and being unaware of a second deadline the form was not submitted until 10/3/2019.

At this same time my representative Rob Jenkins was experiencing severe health issues with colon cancer.”

The long established line of cases since *Ladd v Marshall* [1954] 1WLR 1489 states that new evidence will give rise to a basis for reviewing a decision if it has become available for the first time since the conclusion of the hearing, if its existence could not have been reasonably known of or foreseen at the time of the hearing, and if it is apparently credible. HHJ Eady QC (as she then was) in *Outasight VB Ltd v Brown* UKEAT 0253/14 held that even if these principles are not strictly met, it might nevertheless still be in the interests of justice to permit new evidence to be adduced. However, some specific factor must be pointed to by the party seeking to adduce the evidence to show why, with reasonable diligence, it could not have been obtained earlier, for example if the party was ambushed by what took place.

I am afraid that the failure to recall a significant event does not fall, in my judgment, into the category of evidence which ought to be weighed in the balance after the conclusion of the litigation. The claimant had some six months' notice of the Preliminary Hearing which was to determine the jurisdictional issue of whether his complaints had been presented within the statutory time limits, and so had every opportunity of being able to address his personal circumstances during the relevant period.

In any event, despite Mr Sargent dealing with the loss of his father in law, he did in fact manage to draft the ET1 in readiness for its presentation to the ET. It does not therefore appear to be the case that the claimant's understandable pre-occupation with such a significant life event, did give rise to any practical impediment in preparing the ET1.

This leaves the question of the health of Mr Jenkins who had been assisting the claimant. Mr Jenkins was present and indeed representing Mr Sargent at the Hearing in January 2020. He did not raise any issues about his health by way of explanation for the delay in presenting the ET1 after the claimant had produced a draft document. There is no explanation for this omission.

There is no reasonable prospect of the original decision being varied or revoked.

Employment Judge Tuck QC.
17 March 2020

Date
JUDGMENT SENT TO THE PARTIES ON

.....30/7/20.....

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FOR THE TRIBUNAL OFFICE