EMPLOYMENT TRIBUNALS

Claimant: **Ms C Short**

Respondent: **Ms L Matthews**

RECONSIDERATION DECISION

The claimant's application dated 23 August 2020 for reconsideration of my Reserved Judgment in which I found the Tribunal had no jurisdiction to hear the claimant's complaints of disability discrimination, unfair dismissal, wrongful dismissal, unauthorised deduction from wages as they were presented out of time is refused.

REASONS

The reconsideration applications

1. I have undertaken a preliminary consideration of the claimant's application for reconsideration of the liability judgment.

The law

2. An application for reconsideration is an exception to the general principle that (subject to an appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Under Rule 72(1) I may refuse an application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in Ministry of Justice v Burton and anor [2016] EWCA Civ 714 where it was said:

> *"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law*

> *cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."*

5. Similarly in Liddington v 2Gether NHS Foundation Trust EAT/0002/16 the Employment Appeal Tribunal said:

> *"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."*

The claimant's reconsideration application

6. I turn now to the grounds for the reconsideration application. The claimant says in her application of 23 August 2020 that:

- She is still stating that she followed advice given to her by the CAB and she had done what they advised her to do and when to do it.

- At the time she was severely suffering with anxiety and stress which was causing extreme chest pains and anxiety attacks requiring paramedic attention. She was also suffering with back pain and sciatica which she had had over a period of 5 – 6 years. She says that she was not functioning or thinking straight for months due to that illness, ill health within her family and the breakdown of a relationship of 19 years which had involved the police, the risk of becoming homeless and financial worries compounded by, she says, being made redundant but not receiving redundancy pay. She says that her family sought help for her from the council homeless prevention team who eventually were able to find her a flat which she moved into with her son in July 2019. She was also referred to a team of social workers for support.

- The claimant says that her first meeting with a social worker was on 1 May 2019 and that the social worker helped her with forms for housing, bills, and took the claimant to the job centre and helped her full in forms for benefits. She says the social worker accompanied her to many visits at the job centre as the claimant was not well enough to do it alone. She says she received regular assistance from social workers between May 2019 and February or March 2020.

- She says that she knew about the 3 month time limit for the claims but with everything happening at the same time and being extremely unwell she followed the advice given by the CAB. She says she could not cope due to stress and anxiety.

- She says she telephoned Acas on 30 August 2019 for a claim form and her early conciliation claim form was returned to Acas on 9 September 2019.

- The claimant also refers to an incident on 7 April 2020 when she tried to hand deliver a bundle of evidence to the Respondent which the Respondent refused to accept. At the time it was anticipated that the case was being prepared for a full hearing starting on 1 June 2020 which ultimately did not go ahead because of the Coronavirus pandemic. Instead a telephone case management hearing was held where Employment Judge Moore decided to instead listed the case for a preliminary hearing to consider whether the claims were presented in time/ whether time should be extended. The claimant says that the bundle of evidence should have been requested and read through prior to the preliminary hearing on 6 August 2020.

- The claimant says it is unjust that she is not allowed to proceed on a time limit issue when she says the respondent failed to comply with time limits to pay the sums the claimant says were due to her and in the respondent discriminating against the claimant by making her redundant due to her ill health and taking the claimant's job for herself.

Decision

7. In relation to the events of 7 April 2020 they are not directly relevant to the question time limits that I had to decide as it happened *after* the claimant presented her employment tribunal claim. The claimant appears to be saying that the incident deprived her of the opportunity for a bundle of evidence to be put before me on 6 August 2020. That is dealt with at paragraph 4 of my reserved Judgment where I set out having a discussion

with the claimant about documents she wanted to rely upon and that I read prior to reaching my decision on the issues relating to time limits. The claimant has not said what else she considers she would have submitted to me that is of relevance. She also did not identify at the hearing itself any other documents she wished me to consider. I took into account the documents about her health and they are dealt with at paragraph 32 of my Reserved Judgment.

8. I understand that the claimant feels a sense of injustice as she considers that the law relating to the time limits in which Employment Tribunal claims must be brought has led to her not being able to pursue parts of her case whereas she considers the respondent has been allowed to continue to defend the claim despite (on the claimant's view) not having complied with case management orders. However, the law relating to time limits for Employment Tribunal claims is set out within the various specific pieces of legislation referred to in the Reserved Judgment and has to be applied by me taking into account the principles that have emerged from the case law in the field. It is different to how the Tribunal case manages a claim once brought under the Employment Tribunal Rules of Procedure. How the claimant considers the respondent has conducted the proceedings since the claim was brought is not a relevant consideration when assessing the questions relating to time limits.

9. The claimant within her reconsideration application has expanded upon the witness evidence she gave at the preliminary hearing about the various factors that she says were affecting her mental wellbeing and the support that she was receiving from individuals such as social workers. This was not within her witness statement for the preliminary hearing, or within the medical records, nor did she say it at the preliminary hearing. The claimant's witness statement for the hearing on 6 August was largely focused upon the claimant saying she had followed what the CAB had told her to do. Whilst I fully appreciate that the claimant was and remains a litigant in person she also knew what the hearing on 6 August was about and that her witness evidence needed to explain why her claims were not lodged within time and why it would be just and equitable to extend time. To admit the additional evidence now would, in my view, be likely to offend against the public policy principle of finality in litigation and amount to an opportunity for the claim to seek to re-argue the issues in a different way and by adopting points previously omitted. It would be a second bite of the cherry.

10. In summary, I am satisfied on the basis of what is before me that there is no reasonable prospect of my original decision being varied or revoked. The application for reconsideration is therefore refused.

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Employment Judge Harfield
Dated: 21 October 2020

JUDGMENT SENT TO THE PARTIES ON

22 October 2020

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS