



EMPLOYMENT TRIBUNALS

Claimant: Ms B Skarbek-Cielecka

Respondent: (1) Green Cross Recruitment
(2) Alpha Medical Support

UPON APPLICATION made by the Claimant by letter dated **29 June 2019** to reconsider the judgment sent to the parties on **21 June 2019** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT

It is the judgment of the Tribunal that:

The Claimant's application for reconsideration is refused.

REASONS

1. By a judgment given at a hearing on 23 May 2019, the Claimant's claim for unauthorised deductions from wages, failure to pay holiday pay and unauthorised payments to an employer was dismissed on the basis that the Tribunal had no jurisdiction to hear it. A written copy of the judgment with reasons was sent to the parties on 21 June 2019.
2. In summary, the case had come before me as a remedy hearing, no response having been received from the First Respondent. It appeared that the Second Respondent had not been served with the claim form, but the Claimant did not pursue any claim against the Second Respondent. It became apparent during the hearing that the claim had been brought out of time and there had been no determination of the jurisdiction issue. The Claimant had acknowledged in the claim form that the claim was out of time and asked for an extension on the basis of a number of issues that were causing her stress and "problems with decision making". I determined that the primary time limit expired on 1 February 2018. The extended time limit expired on 7 March 2018. The claim form was presented on 16 March 2018, nine days out of time.

3. Having heard evidence from the Claimant I was not satisfied that it was not reasonably practicable for her to have presented the claim in time. The relevant part of the judgment reads as follows:

“19. The Claimant argued that it was not reasonably practicable because she is not a lawyer and she was unable to get any legal advice until 15 March 2018, after the deadline had passed. She said, however, that she knew about the primary three-month time limit. She was not sure what effect the early conciliation process had on the time limits, but she knew there was a deadline after she received the certificate on 7 February 2018. She said she contacted the Citizen’s Advice Bureau quickly after that, but they could not give her an appointment until 15 March. She knew that that would be after the time limit had expired. She did not take any other steps to either discover the date by which the claim had to be submitted or to submit her claim. She said this was because she was under stress due to another Tribunal claim she had brought against another employer, and both that employer and the Respondents in this case “stealing her money”. She was also looking for other jobs. She said she had gone to her doctor about the stress, but she did not have any medical evidence. She was also dealing with the police because she believed she was being followed by cars connected with another employer. She said she relied on the CAB and they would not allow her to meet an advisor until 15 March. She completed the claim form that day and sent it by post.

20. I was not satisfied that it was not reasonably practicable for the Claimant to present the claim in time, i.e. by 7 March 2018. I accept of course that she is not legally trained and was not represented at the time. She did, however, have some familiarity with Tribunal proceedings and I note that she had recently brought another claim. Although she did not know the exact date on which the time limit expired, she knew that it was before her appointment with the CAB on 15 March. She took no steps to present her claim before the appointment. I do not accept that there was anything preventing her from doing so. Even if she was suffering from stress, for which she had attended her GP, she had managed to take all steps up to that point, including contacting ACAS and presenting another Tribunal claim. She was also applying for jobs. She could have attempted to discover the Tribunal deadline, and she could have presented her claim form before the meeting with the CAB.”

4. On 29 June 2019 the Claimant applied for reconsideration of the judgment. She said she did not expect questioning on time limits and did not have sick notes with her because they were with her former representative. She said she had sent copies of the all the sick notes to the Tribunal on 11 June 2019. She said that as a consequence of the stress from which she was suffering she had a “breakdown” between the 19 February 2018 and 10 May 2018. She argued it was not reasonably practicable to present her claim during this breakdown, “while on strong anti depressants, suffering from panic and anxiety. She claimed that she had been applying for jobs in October 2017, not in February/ March 2018 and her other claim was presented earlier, in December 2017. In February 2018 she believed she was being followed or

“stalked” by a particular car and by taxis and this is what prompted the breakdown.

5. The documents sent to the Tribunal on 11 June 2019 were copies of sick notes from the Claimant's GP saying that the Claimant was not fit for work for the period 19 February to 10 May 2018 due to “stress related problem”.
6. On 24 September 2019 the Tribunal wrote to the parties following my initial consideration of the reconsideration application, pursuant to Rule 72(1) of the Employment Tribunal Rules of Procedure. My provisional view was that the application should proceed and the original decision revoked because the Claimant was not prepared to deal with the time limit issue at the hearing on 23 May 2019 and relevant evidence was therefore not considered. I considered that the matter should be listed for a reconsideration hearing. The First Respondent was given 14 days to object to the matter being reconsidered, and both parties were asked to state by the same date whether the matter could be determined without a hearing.
7. On 4 October 2019 Ms Dogaru of the First Respondent wrote to the Tribunal, apparently not copied to the Claimant, objecting to the matter being reconsidered, essentially on the basis that the medical evidence submitted was insufficient.
8. In the meantime the Claimant had been seeking documents relating to her pay at the First Respondent from Ms Dogaru and there was a dispute about whether these had been provided to the Claimant or her former representative. That dispute is not relevant given the conclusion below.
9. A three-hour reconsideration hearing was listed, originally to take place on 30 March 2020. It was postponed due to the pandemic and the suspension of all face to face hearings. It was relisted to take place today, 22 October 2020.
10. There was no attendance by either party at today's hearing. I therefore decided to determine the reconsideration application on the papers. The parties had had ample notice of the hearing and could have made further written submissions if they did not want to attend. Neither party had asked for a postponement or provided any reasons for their non-attendance, and it was not in the interests of justice for the matter to be further delayed.
11. I accept that the sick notes provided by the Claimant support her case that she was suffering from stress at the relevant time (between 7 February and 7 March 2018). They provide new evidence, not before me at the original hearing, that she was signed off from work during that period. That is not sufficient, however, to establish that it was not reasonably practicable for her to submit her claim in time. She has not provided any medical evidence of the effect of the stress on her, other than her not being fit for work. Nor is there any evidence that she was prescribed “strong anti depressants”, of “panic and anxiety”, or of the “stalking” she claims to have happened in February 2018. Further, the original judgment was made taking into account the fact that the Claimant may have been suffering from stress for which she had attended her GP. My interpretation of the Claimant's evidence was that the main reason for the delay was that she was waiting for the appointment with the CAB. She

knew that by doing so the claim would be out of time, but took no steps to submit it in time. Further, her claim form said that one of the reasons for the delay was the “need to attend interviews for other jobs”, which is in conflict with the assertion in the reconsideration application that she was not applying for jobs at this time.

12. Although I accept that the Claimant should have had an opportunity to present evidence relevant to the time limit point, she has now had that opportunity. The limited evidence provided in support of the reconsideration application does not alter the conclusion of the original judgment; the Claimant has failed to demonstrate it was not reasonably practicable to present the claim in time. The burden of proof is on her and she has not provided any further evidence apart from the GP notes and she did not attend the reconsideration hearing.
13. In conclusion, there are no good grounds to vary or revoke the original judgment so the application for reconsideration is refused.

Employment Judge Ferguson

Date: 22 October 2020