EMPLOYMENT TRIBUNALS

Claimant: **Mr A Thomas**

Respondents: **(1) Quad Recruitment Limited**
(2) Mr J Roberts

UPON APPLICATION made in a document from the Respondents, attached to an email from their representative dated 14 October 2020, to reconsider the Judgment, sent to the parties on 30 September 2020 ("**Judgment**"), under rule 71 of the Employment Tribunals Rules of Procedure 2013 ("**Rules**").

JUDGMENT

The Respondents' application for reconsideration is refused as there is no reasonable prospect of the original decision being varied or revoked. The Judgment is therefore confirmed.

REASONS

Background

1. The Respondents' document attached to their representative's email of 14 October 2020 set out their application for reconsideration of the Judgment. In that Judgment I had concluded that the Claimant was disabled at the relevant times for the purposes of section 6 of the Equality Act 2010 ("Act").

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 Respondents' document, whilst perhaps more expressed as an appeal rather than a reconsideration

application, 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(2) sets out the process that is then to be followed for further consideration of the application.

The Application

5. The Respondents' application for reconsideration was made on the following four bases:

   a. That I erred in law by failing to have regard to the decision of the Employment Appeal Tribunal in Tesco Stores Limited v Tennant (UKEAT/0167/19).

   b. That I did not have sufficient evidence before me to determine whether the Claimant's version of events in relation to ongoing medical treatment was true.

   c. That my decision had the effect of essentially labelling any person suffering from anxiety and depression which was not severe in nature as disabled, which would not have been the intention of Parliament.

   d. That I appeared to have drawn a conclusion relation to medication which I was wholly unqualified to make, and on which I had heard no qualified evidence in the form of a medical report or expert witness.

Conclusions

6. I deal with each of the Respondents' grounds in turn.

   Ground 1

7. This point could perhaps be addressed shortly by saying that no reference was made to the Tennant case in submissions and therefore I could not be expected to have had regard to it. Regardless of that however, I considered it appropriate to consider the Tennant judgment and I concluded that it would have had no bearing on my decision.

8. The focus of that judgment appears to have been on the Tribunal's conclusion that the claimant had been disabled by reference to sub-paragraph 2(1)(a) of Part 1 of Schedule 1 to the Act, i.e. that the effect of the impairment had lasted for at least 12 months, which the EAT considered to have been unsupported by the evidence. In this case however, I concluded that the impairment (if medical treatment was discounted) had, by the time of the hearing, lasted for more than 12

months, and that, viewed from the perspective of the relevant date of 31 May 2019, had been likely to have lasted for at least 12 months at that time, i.e. was covered by sub-paragraph 2(1)(b) of Part 1 of Schedule 1 to the Act.

Ground 2

9. Evidence was before me in the form of the Claimant's GP notes, his statement, and his answers to questions under oath, from the Respondents' representative and from me. Specifically, the Claimant confirmed, in an answer to a question from me, that he was still taking the prescribed medication. I had no reason to doubt that evidence and therefore accepted it.

Ground 3

10. The issue, addressed by this ground, for me to consider was whether the Claimant's impairment had a substantial adverse effect on his ability to carry out day-to-day activities. The medical categorisation of that as "severe" or otherwise has no direct bearing on that question, which is governed by section 212(1) of that Act, which defines "*substantial*" as "*more than minor or trivial*".

11. In that regard, in light of the evidence I read and heard, I was satisfied that the impact of the condition on the Claimant, discounting the impact of medication, had been more than minor or trivial. That decision was based on the specific facts of this case and has no wider application.

Ground 4

12. The question of whether a person is or was disabled under the Act is a legal question for a Tribunal to decide. It was therefore a matter for me to decide, based on the evidence I read and heard, whether qualified or not.

13. Overall, I did not consider that there was any reasonable prospect of the Tribunal's 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: 5 November 2020

JUDGMENT SENT TO THE PARTIES ON 12 November 2020

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FOR THE TRIBUNAL OFFICE