



EMPLOYMENT TRIBUNALS

Claimant: Ms L Wellings

Respondent: Sense, The National Deafblind and Rubella Association

RECONSIDERATION JUDGMENT

The claimant's application for reconsideration is refused.

REASONS

1. This decision has been made without a hearing, in accordance with rule 72(1).
2. The application is refused because I [Employment Judge Camp] consider that there is no reasonable prospect of the original decision being varied or revoked.
3. There was a video (CVP) preliminary hearing on 19 November 2020 in the Midlands (East) region during which, amongst other things, I gave a reasoned decision dismissing the claimant's – Ms Wellings's – claim because of time limits. I refer to and repeat the written reasons for that decision, sent to the parties on 3 March 2021. They were not sent out until then because of factors explained within the reasons themselves.
4. On 16 March 2021, the claimant's representative, Mr Micklewright (who also assisted her at the hearing), emailed the Tribunal a document that he described as an appeal but which asks me to reconsider my decision and which I am taking as a reconsideration application under rules 70 and 71. For his and for the claimant's information, an appeal is a completely separate process and if the claimant wants to appeal, I suggest she considers carefully the document headed "*EMPLOYMENT TRIBUNAL JUDGMENT*" that was sent to her with the written version of the Judgment back in November 2020.
5. I refer to the claimant's "appeal" document, which I shall call her "application". In addition, I note the respondent's solicitors' letter dated 18 March 2021 responding to it.
6. In short, there is nothing in the claimant's application that causes me to think that I made, or might have made, a mistake in my decision.
7. My decision was based on what the claimant and Mr Micklewright said during the hearing. The claimant gave evidence and was questioned extensively by me and the respondent's

solicitors about her claim and the reasons why she presented both claims when she did and not before. She and Mr Micklewright were also given every opportunity to say anything and everything else they wanted to in opposition to the respondent's application to have the claim dismissed on time limits grounds. The claimant's application, I am afraid, appears to be an attempt to have a 'second bite at the cherry' – to put forward evidence and submissions that they wish had been put forward at the hearing, but which weren't.

8. Addressing the specific things in the application:

- 8.1 during the hearing, no one suggested that "*confusion with two claims*" was responsible for the second claim being late. Moreover, even if that suggestion had been made, it would not have helped the claimant given that any such confusion would not explain why a valid claim could not have been presented on time in March 2020, and given the facts and matters set out in paragraphs 18 and 19 of the Reasons;
- 8.2 the suggestion that the claimant was "*unaware that the time clock had re started*" is inconsistent with the claimant's own evidence at the hearing and my findings;
- 8.3 during the hearing, no one suggested that confusion between Ms Wellings's and Ms Kelly's cases was the reason for the late submission of the second claim. Also, that would, once again, not explain why a valid claim could not have been presented in March 2020 – nor, indeed, why the claimant could not have submitted a valid claim when she submitted the first claim, which was rejected (by a Judge and not, as suggested, by Ms Skinner, who is a member of the Tribunal's administrative staff); nor why she did not apply for reconsideration of that rejection quickly rather than launching a second claim many weeks later;
- 8.4 during the hearing, no one suggested that the second claim was submitted late because the claimant was waiting for a response to a subject access request which was not responded to until 21 May 2020. It would, anyway, not explain its late submission, given that the claimant presented her first claim in April 2020 and that her second claim did not substantively have more information in it than the first (on the basis of what I was told at the hearing; see paragraph 19 of the reasons);
- 8.5 the suggestion that the last detriment was after 24 November 2019 was not made during the hearing and no explanation is given in the application for why it wasn't. The claimant explicitly confirmed in her evidence that she was not claiming about anything that happened after the end of her employment. What is suggested in the application is that further detriments – presumably detriments during employment and therefore on or before 24 November 2019 – were revealed in her personnel file that she received on 2 April 2019 and that the respondent's response to the subject access request was a further detriment. If that was her case, she and Mr Micklewright were aware of it when the second claim was presented, on 18 June 2020 and they were certainly aware of it by the time of the hearing in November 2020; but it was not her case at the hearing. That they now, presumably in light of my decision, want to put forward something that they believe would have given them

a better outcome at the hearing had it been put forward then does not provide a valid basis for reconsideration. Moreover, the claim form does not contain any discernible complaint about the response to the subject access request; it wouldn't do so given that it is largely identical to the claim form submitted in April 2020 before that response was received. The claimant would have to have successfully applied to amend in order for any such complaint to be before the Tribunal. No such application has been made, let alone a successful one.

9. In conclusion, I made a decision that it was open to me to make at the time on the basis of everything put before me by the claimant and on her behalf. Even with the full benefit of hindsight, I can see no error. Reconsideration cannot be necessary in the interests of justice in those circumstances.
10. Finally, I note Mr Micklewright stating in the application that he, "*will prepare the documents to enable you to assist in your decision and will forward them to you as soon as they are ready*". A reconsideration application has to be made within 14 days of the Reasons being sent. In this instance, that time limit expired on 17 March 2021. I am preparing these reasons on 23 March 2021. Nothing further has been received from the claimant or Mr Micklewright. In accordance with the Rules, I have considered the application that was made on 16 March 2021 and I would also – in my discretion – have considered any additional documents that were submitted by 17 March 2021. (If they were documents that were not shown to me at the hearing, I might well have given them little or no weight, but I would at least have looked at them). I am not prepared to delay making my reconsideration decision any longer. Unfortunately for the claimant, I don't think it would be appropriate to wait indefinitely for her representative to lodge additional evidence that should – if the claimant wanted me to take it into account when considering the application under rule 72(1) – have been put before the Tribunal at the hearing or, at the latest, within the time limit for applying for reconsideration.

Employment Judge Camp

23 March 2021