



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102742/2019 (A)

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Held via telephone conference call on 13 August 2020

Employment Judge S MacLean

10 **Miss Charlotte Glasgow**

**Claimant
Not present and
Not represented**

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Tesco Personal Finance plc

**Respondent
Represented by:
Ms E Johnston -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant's claim is dismissed under rule 47 of the Rules contained in Schedule
25 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations
2013 for failure to attend the hearing.

REASONS

Background

1. The claim form was sent to the Tribunal on 1 March 2019. The response was
30 received on 16 April 2019. A preliminary hearing for case management took
place on 17 May 2019. The claimant was unrepresented at that stage. As the
claimant complained of disability discrimination the focus was on disability
status which the respondent did not concede. The claimant said that she was
35 relying on severe depression with anxiety as a factor. The claimant agreed to
provide information to the respondent on a voluntary basis which included a
personal statement.

2. A preliminary hearing for case management took place on 26 August 2019 to discuss various procedural matters. The respondent explained that there had been no disclosure of medical evidence to show that the claimant was a disabled person for the purposes of the Equality Act 2010 (EqA). It was
5 agreed that by 23 September 2019 the claimant would inform the Tribunal if she was instructing a representative to assist her or obtaining the information from her GP herself.
3. A medical report from the claimant's GP was produced on 6 September 2019 which summarised the claimant's condition from February 2018 to September
10 2019. The respondent advised by email sent on 21 October 2019 that based on the information provided disability status remained an issue as there was a lack of detail as to the claimant's anxiety at the time of her employment was terminated in December 2018 and the impact that it had on had on her life at the material time.
- 15 4. By December 2019 the claimant was represented by Livingstone Brown Solicitors who made various applications including an application for the claimant to be given six weeks to disclose to the respondent's representative the claimant's medical records relating to her disability. The respondent confirmed that there was no objection to this.
- 20 5. The medical evidence should have been provided by the end of January 2020. The claimant failed to do so. On 2 March 2020 the respondent ascertained that the claimant's representative had left the firm and the new representative would be in touch to discuss the matter.
6. As there was no reply the respondent made an application for an unless order
25 that the claimant's representative confirm that the claim is being actively pursued and to provide the relevant medical evidence. By email sent on 12 March 2020 the claimant's new representative objected to the application.
7. On 25 April 2020 Livingstone Brown wrote the Tribunal advising that they no longer acted for the claimant.

8. As the respondent had no contact from the claimant it made an application on 14 May 2020 for an order that the claimant provides the relevant medical information by 15 June 2020.
9. On 3 June 2020 Employment Judge Walker directed that the claimant be given six weeks to disclose her medical records to the respondent; the respondent be given a further three weeks to confirm it is conceded that the claimant is a disabled person; and a preliminary hearing for case management purposes be fixed in approximately ten weeks to issue further case management orders.
10. The parties were given notice of this telephone conference call preliminary hearing on 4 June 2020 and asked to provide telephone contact details they intended to use.
11. On 10 June 2020 the claimant sent an email to the Tribunal and the respondent's representative as follows:
- 15 *"To whom it may concern*
- I apologise for my lack of communication during this current time. In regards to the documentation for medical evidence I have provided a medical report from my GP which answered the questions previously set out by the respondent. What other information exactly is required?*
- 20 *Thank you."*
12. The respondent's representative replied that the claimant should produce her medical records so that the respondent could determine if there was enough to suggest that she was suffering from a disability at the material time (during her employment with the respondent). The information provided only showed the extent of the anxiety condition which was not in the respondent's view enough to show that she was suffering from a disability in the later part of 2018.
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13. The claimant sent an email on 13 July 2020 stating that her previous representative had a copy of the her "medical records" and she had already

paid for this “report” and was not in a financial position to pay for another one. The claimant asked for time to “chase this up” as she was “in the process now”.

14. The respondent’s representative sought an unless order on 20 July 2020 that the claimant provide the relevant medical evidence in respect of the disability by 31 July 2020, failing which no further medical evidence shall be admissible. In the reasoning the background to the application was set out including the observation that it was unclear to the respondent why if the claimant’s former representative has the relevant medical records they were not disclosed. The application which also mentioned the preliminary hearing on 13 August 2020 was copied to the claimant. The claimant did not object or comment on the application.
15. On 29 July 2020 the Tribunal wrote to the claimant seeking comments by 5 August 2020. No reply was received from the claimant. The application was not granted as Employment Judge Walker directed that it be discussed at the preliminary hearing on 13 August 2020.

Preliminary Hearing

16. Ms Johnston, who was instructed by Alan Gilchrist, represented the respondent at preliminary hearing by telephone conference call on 13 August 2020.
17. There was a delayed start to the preliminary hearing. The clerk advised that she had telephoned the claimant four times on the contact number detailed on the claim form. On each occasion the telephone call diverted to voicemail. This suggested that the number is still in use.
18. I checked the case papers to see if the claimant had provided an alternative contact telephone number in response to the notice of the preliminary hearing. She had not. Ms Johnston also confirmed that she had not had any recent contact from the claimant.
19. I was satisfied that the claimant was aware of the preliminary hearing because she had responded to the notice of hearing albeit she had not as requested

confirmed the details of the telephone number she intended to use. It was in my view reasonable in these circumstances to contact the claimant on the telephone number provided in her claim form.

20. I also noted that the claimant had emailed the Tribunal on 13 July 2020. She had not objected to or commented on the respondent's application dated 20 July 2020 nor had she replied to the Tribunal's correspondence dated 29 July 2020. The claimant had not contacted the Tribunal or Ms Johnstone to indicate that she was unable to attend the preliminary hearing or was seeking a postponement.

21. Having reviewed all the information available to me I considered that the respondent has taken account of all the information that the claimant is willing and/or able to provide in relation to her disability status. It does not concede the preliminary issue so a preliminary hearing on disability status would be necessary. However, the claimant does not appear to be actively pursuing the claim as she has not replied to recent correspondence and has failed to participate in this preliminary hearing. In the circumstances I decided that the claim should be dismissed under rule 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

22. If any party wishes to apply for reconsideration of this judgment because it is in the interests of justice to do so they must send a written application to the tribunal office with a copy to the other party in accordance with rule 71 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

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Employment Judge: S MacLean
Date of Judgment: 18 August 2020
Entered in register: 20 August 2020
and copied to parties

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