



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondents

Mr R Moss

v

1. Blackberry UK Ltd
2. Mr S Dhaliwal

Heard at: Watford

On: 31 March 2021

Before: Employment Judge R Lewis

## Appearances

For the Claimant: Written submissions

For the Respondents: Written submissions

## RECONSIDERATION JUDGMENT

The claimant's application for reconsideration is refused.

## REASONS

1. I heard this matter on 4 December 2020. My reserved judgment was signed on 7 January 2021, and sent to the parties on 1<sup>st</sup> February. On 10 February the claimant applied for reconsideration. The respondents were offered the opportunity to reply. The first respondent replied in submissions of 17 March. All three parties have consented to a paper determination in accordance with rule 72(2). I use 'RJ' to refer to my reserved judgment, and RJ34 therefore refers to paragraph 34 of that judgment.
2. I have for today's purposes not considered matters raised in submission by the claimant which did not make a difference to the outcome of the first hearing. The reason is that while any factual inaccuracy in a judgment would be of course regrettable, not every factual inaccuracy is material to the final conclusion(s). My finding at RJ33 was for example not influenced by any mis-reading of Dr Bergson's notes, and I therefore do not need to re-visit her notes for present purposes.

3. It seems to me on reconsideration that as I found, in the claimant's favour, that there was evidence of an impairment which had a substantial adverse effect on day to day activities, the crucial question today is whether the material relied upon by the claimant requires me to revoke my finding at RJ34 that the substantial adverse effect was not long term. The claimant approaches this point by inviting me to find that the effect began before I found it did, and / or was likely to recur after the period when I found it ceased.
4. I take the latter point first, which I understand to be the point made by the claimant at #11 of his application. My conclusions about Dr Bergson's discharge of the claimant, and my interpretation of the language which she noted when doing so, are set out at RJ19.5 and RJ38.
5. My conclusion was that when she discharged the claimant Dr Bergson did not advise that a recurrence was likely, and used language which I interpreted to the contrary effect. That being so, I found that it was not shown on evidence to the tribunal that the effect was likely to recur. I have re-read the relevant documents in light of the claimant's submissions. Having done so, I do not consider that an interest of justice has been shown which requires reconsideration of that part of my judgment or its consequences.
6. The former point is less straightforward, as indicated at RJ28-32. In the course of this hearing I noticed a curious typo, for which I apologise, at RJ19.8, where my Judgement misquotes the last word of the record of 20 December 2018 as 'New' when in fact it reads 'First.' Although the two are, in context, synonymous, the word 'First' seems to me a clearer record by the GP that this was the first occasion on which this matter was to be recorded.
7. I understand the claimant to ask me to re-visit my interpretation of the medical records. I have re-read RJ19.3 to 19.9 inclusive, with RJ35-37 inclusive, along with in particular #2 and #4 of the claimant's submissions.
8. I draw to the claimant's attention the final sentence of RJ19.4, read with RJ31. I take this opportunity to state in terms that which I left implied in that sentence of RJ19.4. Where the term 'anxiety' appears in the 'History' section of a GP note, I understand that to be the GP's record of what the patient has said, not the GP's clinical diagnosis. My interpretation of the GP consultations remains that set out at RJ37, and is not changed by the claimant's submissions.
9. I do not consider that an interest of justice has been shown which requires reconsideration of that part of my judgment or its consequences.

Employment Judge R Lewis

Date: .....1/4/2021

Sent to the parties on: .....26/4/21....

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For the Tribunal Office