EMPLOYMENT TRIBUNALS

Claimant: Mr D P Hoppe

Respondents: Cabinet Office
Health Assured Limited
Her Majesty's Revenue and Customs

JUDGMENT

The claimant's application dated 18 April 2021 for reconsideration of the judgment sent to the parties on 8 April 2021 is refused.

REASONS

The application

1. The claimant's email dated 18 April 2021, sent at 11.35, described as a "request for review and clarification" is treated as an application for reconsideration of the judgment sent to the parties on 8 April 2021 (referred to in these reasons as "the judgment").

2. As described in the judgment, the hearing on 2-3 February 2021 was recorded. The claimant requested and has been provided with a transcript of the hearing on 3 February 2021. As explained by Regional Employment Judge Franey in the Tribunal's letter of 28 April 2021, the recording is incomplete since, to be able to hear the participants clearly, I had to start using headphones part way through the hearing. Unfortunately, this meant that the portable dictaphone being used to record the hearing only recorded my voice from that point on (which was part way through the evidence of Mr Spain).

3. The transcript was provided to the claimant with the Tribunal's letter of 28 April 2021 and Regional Employment Judge Franey gave the claimant 14 days from the date of that letter to supply any additional points in support of his application for reconsideration.

4. The claimant provided further arguments in a document attached to an email dated 5 May 2021.

Relevant law

5. Rule 70 of the Employment Tribunals Rules of Procedure 2013 ("the Rules") provides that a Tribunal may, on its own initiative, or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked. If it is revoked, it may be taken again.

6. Rule 71 sets out the time limit for making an application (with which the claimant has complied) and that the application shall set out why reconsideration of the original decision is necessary.

7. Rule 72 sets out the process for considering an application made under rule 71. Rule 72(1) provides that an employment judge shall consider the application and, if the judge considers that there is no reasonable prospect of the original decision being varied or revoked, "the application shall be refused". The remainder of rule 72 sets out the process if the judge does not consider there is no reasonable prospect of the decision being varied or revoked.

Conclusions on the application

8. I have considered carefully the contents of the claimant's email of 18 April 2021 and the further written submissions sent on 5 May 2021.

9. Much of what the claimant writes is in support of his argument that the Tribunal should have ordered wider disclosure of documents prior to the hearing in February 2021 and expressing his view that the Tribunal could not fairly make a decision on the points in issue at the February hearing without this wider disclosure. This is not an argument which has any reasonable prospect of leading me to vary or revoke the judgment. This argument was made at the hearing and I dealt with this in paragraph 25 of my reasons for the judgment. The matter of disclosure was at an end subject to any appeal which the claimant might make against the order of REJ Franey. At the time no appeal had been made. Subsequently, I understand, the claimant presented an appeal against REJ Franey's disclosure order made on 12 January 2021. I note that a judge at the EAT has expressed the view, in a letter sent on 28 April 2021, that the appeal has no reasonable prospect of success and the claimant has been informed that, in accordance with Rule 3(7) of the Employment Appeal Tribunal Rules, no further action will be taken on the appeal. I have no information on whether the claimant has exercised his entitlement to a hearing under Rule 3(10) of the EAT Rules. The position is still, as it was at the hearing in February, that the disclosure order made by REJ Franey stands.

10. One particular document which the claimant says should have been disclosed is a purchase order between HMRC and Health Assured. The claimant argues that disclosure of the actual purchase order is required to determine relevant issues. I have dealt with the disclosure issue above. However, for the purposes of my judgment, I made an assumption, without deciding this, that there

was a purchase order and that there was a contract between HMRC and Health Assured for the provision of the medical report (see paragraph 89 of the judgment). Factoring in this assumption, my conclusion was that Health Assured was not acting as the agent of HMRC in failing to complete a review assessment required under CSIBS for the reasons given in my judgment.

11. I was required to make a decision based on the relevant law and on the evidence available to me at the February hearing and this is what I did although, as noted above, I made an assumption in the claimant's favour about the existence of a purchase order and contract between HMRC and Health Assured.

12. The claimant asks a number of questions in his submissions and makes requests for clarification on various matters. These are not arguments as to why reconsideration of the judgment is necessary and I do not consider it appropriate to provide answers to the claimant's questions or further explanation for my judgment. My judgment must remain as it is, unless I am persuaded by the claimant's application that there is a reasonable prospect of my judgment being varied or revoked on reconsideration.

13. If the claimant considered I erred in law in my judgment, he was entitled to appeal to the EAT within the relevant time limit for an and, if the EAT agrees with him, the judgment will be overturned. I do not know, at the time of writing this judgment, whether the claimant has appealed against the judgment.

14. I have found it difficult to understand, from the claimant's letter of 18 April 2021 and his submissions sent on 5 May 2021, why he considers reconsideration of the judgment to be necessary, other than his arguments in relation to disclosure, which I have dealt with above. I will, however, deal with some specific points which I have identified as potentially relevant arguments.

15. The claimant asserts in his letter of 18 April 2021 that I ignored evidence that the claim (for benefits under the CSIBS) had to be made via HMRC and it was not the Cabinet Office or its subcontractors (MyCSP and/or Health Assured) who had to receive and action the claim and commission the assessment. The claimant raises the same point at paragraphs 9 and 14 of his submissions of 5 May 2021. The claimant is incorrect in his assertion. I referred to relevant evidence in paragraphs 57 to 61 in my findings of fact and, reached conclusions based on the evidence in paragraph 89. As previously noted, I made an assumption that there was a purchase order and a contract between HMRC and Health Assured.

16. The claimant argues in his letter of 18 April 2021 that I have repeated, at paragraph 37, an assertion that CSIBS is at the discretion of the Minister. I have not repeated any assertion. Paragraph 37 quotes from the rules relating to the CSIBS, which is a statutory scheme.

17. The claimant also argues, in his letter of 18 April 2021, that I have said in paragraph 38 that benefits are paid from central funds and that this is incorrect as it was stated that CSIBS funds were recovered from the employer departments allocated budgets. Although paragraph 38 states that payment is made from

money provided centrally it goes on to state that the cost is then recharged to the relevant employer.

18. The claimant asserts in his letter of 18 April 2021 that I have ignored evidence that HMRC has an agreement in place with the Cabinet Office in respect of delivery of the disputed benefits. He does not, however, identify what evidence (i.e. documentary or witness evidence) he asserts that I have ignored. This does not, therefore, raise a matter which causes me to consider that there is a reasonable prospect of my judgment being varied or revoked on reconsideration.

19. In paragraph 5 of the submissions, the claimant appears to rely on specific provisions in his contract of employment. No copy of a contract of employment was included in the documentary evidence with which I was provided at this hearing. If the claimant considered that a particular clause of his contract was of relevance to the agency issue, he could have included this in the documents for the hearing. He did not. I set out my findings of fact about the CSIBS starting at paragraph 37. The generalized assertions made in this paragraph about the contractual provisions for the provision of pension benefits do not persuade me that I may have made findings of fact about the CSIBS which were not findings I could properly make, based on the evidence before me. The claimant's arguments in this paragraph to not raise any matters which cause me to consider that there is any reasonable prospect of my judgment being varied or revoked on reconsideration.

20. Paragraphs 25 and 31 of the submissions appear to suggest that the conclusions in paragraphs 91 and 98 are not based on any findings of fact. The relevant findings of fact appear at paragraphs 37 to 41. The claimant has not referred to any evidence which could suggest that I have made incorrect findings of fact on the evidence available to me. The claimant again makes points about disclosure which I have dealt with previously.

21. I do not consider that the remainder of the claimant's email of 19 April 2021 and his submissions sent on 5 May 2021 raise any matters which cause me to consider that there is a reasonable prospect of my judgment being varied or revoked on reconsideration.

22. For these reasons, I consider there is no reasonable prospect of the judgment being varied or revoked and I dismiss the claimant's application for reconsideration.

Employment Judge Slater

Date: 21 May 2021

JUDGMENT SENT TO THE PARTIES ON

26 May 2021

FOR THE TRIBUNAL OFFICE