



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Carter
Respondent: Barts Health NHS Trust

JUDGMENT

The claimant's application dated 29 September 2019 for reconsideration of the judgment sent to the parties on 16 September 2019 is refused.

REASONS

1. The Claimant applies for a reconsideration of finding (4) of the judgment on several grounds. I have numbered each and every paragraph of the application email sequentially and make reference to those numbered paragraphs in this judgment.
2. Rule 72(1) of the Employment Tribunal Rules provides as follows:

'An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.'

3. The first stage of the process is not for the Respondent to respond to the application, but for the Employment Judge to consider whether there is any reasonable prospect of the original decision being varied or revoked.

4. The submissions made at paragraph 3-6 have no reasonable prospect of success because, even if the evidence was only that the Claimant was not fully able to weight bear on 26 July 2018 and that she was referred to the pain clinic and that there was a sick certificate recording her as unfit to work until 13 August 2018, there is no reasonable prospect of changing our finding that it was *therefore* unlikely that she was 'walking miles' in the summer shortly thereafter and that there was no likelihood of a return in the short period between 13 August 2018 and the onset of migraine at the beginning of September (paragraph 96 of the Reasons).
5. The submission made at paragraph 7 has no reasonable prospect of success because the Tribunal had to make findings on the evidence that was provided, the parties knowing that the Tribunal would address this issue. The Tribunal made our findings on the basis of what happened to the Claimant in relation to her migraines and explained why we found that this would have happened even if she had not been dismissed.
6. The submission made at paragraph 8 has no reasonable prospect of success. Contrary to the submission's assertion, the Tribunal expressly considered whether it would have been a reasonable adjustment to allow for further disability-related time off and decided that it would not have been because of the factors it set out at paragraph 199 and 197 of our Reasons.
7. The submissions made at paragraph 9 have no reasonable prospect of success. The Claimant's claim for ESA was relevant in general because it established unfitness for work. But, in working through why we considered the Claimant would have been absent during the rest of 2018, the Tribunal dealt with the separate periods of time since dismissal and the reason why the Claimant would not have returned to work, by reference to the specific evidence in relation to each period.
8. The submission made at paragraph 10 has no reasonable prospect of success because it is based on the Claimant's subsequent assertion rather than evidence.
9. The submissions made at paragraphs 12-14 have no reasonable prospect of success because the document at 311 does not change the meaning of the medical report referred to which refers to a keenness to return to work but that 'this is really dependent upon the surgery she is waiting on both feet'. The Tribunal reasonable read this to mean that the Claimant was not then fit to work.
10. The submission made at paragraph 15 has no reasonable prospect of success because the Tribunal expressly did take into account that 3 months would be discounted after each surgery. Our finding was that the employment would not have continued after 2018, even after discounting the period after the first surgery (see paragraphs 198 and 199 of the Reasons).

11. Given the above, there are no reasonable prospects for revoking our finding that there would have been unfitness for work in 2018 and dismissal. Therefore the submissions at paragraphs 16 and 17 have no reasonable prospects of success.

Employment Judge Moor

Date 25 October 2019