



EMPLOYMENT TRIBUNALS

Claimant: Ms S Morris

Respondent: Lauren Richards Limited

JUDGMENT

The claimant's application dated **2 April 2021** for reconsideration of the judgment sent to the parties on 22 March 2021 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because it would not be in the interests of justice to do so for the reasons given below.

1. The Claimant's application argues that she failed to obtain medical evidence which would have assisted her because she had not understood the legal test in Section 6 Equality Act 2010 and had not understood that, when assessing whether her condition was likely to be "long term", the Tribunal would assess this by reference to the circumstances as to her condition at the time of the discriminatory acts. The Tribunal had issued a letter containing certain standard questions to be put to any medical practitioner preparing a report with reference to section 6 of the Equality Act and that letter did not make reference to the need to focus on the time of the discriminatory events when assessing the likelihood that a condition would become long term.
2. The Claimant has now obtained a supplementary medical report from the Psychiatrist which she considers addresses the issue. The report states

"1. From May to June 2019 onwards, Stephanie's condition met the diagnostic criteria for a Mixed Anxiety and Depressive Disorder.

2. The above disorder met the criteria for a disabled person within the meaning of Section 6 of the Equality Act 2010, also from May to June 2019.

3. The impairment had lasted 18-20 months as of January 2021 when I assessed Stephanie.

4. Her mental disability has had a substantial effect on her day to day functioning and activities continuously since May to June 2019, and were still present in January."

3. I recognise that the ET's standard letter as to the questions to be put to medical expert did not focus on whether the Claimant's condition was likely to be "long term" assessed by reference to the circumstances at the relevant time (i.e. as at the date of the discriminatory act). The letter, however, makes clear that it is to be adapted to the particular case.
4. The Claimant first obtained a medical report from a Psychiatrist following a case management hearing which took place on 1 December 2020. She did so because the Respondent had drawn attention, in its skeleton argument for that hearing, to the fact that that no expert report had been produced. That skeleton argument summarized the legal principles relating to disability and set out the correct approach to assessing the likelihood that a condition would be long term on the basis that it was likely to continue or recur. It stated that "*A condition is likely to continue or recur if "it could well happen". (SCA Packaging Ltd v Boyle [2009] ICR 1056. The likelihood if to be determined based on the facts known at the date of the alleged discriminatory act (McDougall v Richmond College [2008] IRLR 227). See also Guidance, section C.*"
5. I consider that the Claimant should have been on notice as a result of this skeleton that, given that her condition had not lasted 12 months at the relevant time, she would be required to address whether, judged by reference to the circumstances at the relevant time, her condition was likely to become long term. I do not therefore consider that it is in the interest of justice to allow the Claimant to put in additional evidence now when this is evidence which could have been made available for the hearing.
6. Furthermore, having reviewed the further report obtained by the Claimant from her Psychiatrist, I do not consider that, even if admitted, it would have led to a different result. It makes a number of broad statements which are not supported by any detailed reasoning. I consider that it still does not address the relevant question in that it does not state whether, focusing on the evidence available at the relevant time (i.e. in the period May to September 2019), it was likely that the Claimant's condition would become long term because it would continue or recur. Rather the additional report reasons backwards from the evidence of subsequent events to deduce that the Claimant was disabled at the relevant time. That is an incorrect approach.

For these reasons, I do not consider that it would be in the interests of justice to reconsider the judgment made that the Claimant was not disabled within the meaning of section 6 Equality Act 2010.

Employment Judge **Milner-Moore**
Dated 26 July 2021

Date _____
JUDGMENT SENT TO THE PARTIES ON

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