



THE EMPLOYMENT TRIBUNALS

Claimant: Mr Matthew Tough

Respondent: Commissioners for HM Revenue and Customs

JUDGMENT ON CLAIMANT'S **APPLICATION FOR RE-** **CONSIDERATION**

The claimant's application dated 12 August 2021 for re-consideration of the tribunal's judgment dated 22 November 2018 is refused

REASONS

1. The tribunal gave a judgment with reasons following the Preliminary Hearing in this claim on 22 November 2018. The tribunal found that the claimant was not a disabled person within the meaning of the Equality Act 2010 at the material date of 18 June 2018.
2. In that decision, the tribunal had considered the preliminary question of whether the claimant was a disabled person within the meaning of the Equality Act 2010. The tribunal found that the claimant had a substantial adverse condition. However the tribunal concluded that the condition was not "long-term" and so did not satisfy the test.

3. The claimant applied for reconsideration. In a re-consideration judgment sent to the parties on 15 January 2019, the tribunal dealt with the application in some detail and refused the claimant's application. A careful reading of that reconsideration judgment shows that the tribunal considered the claimant's application to introduce new evidence and his allegation that the respondent had conducted aspects of the case in a manner amounting to fraud.
4. The application was refused. There needed to be finality in litigation and the tribunal was satisfied that the hearing was conducted in a manner that was procedurally and substantively fair to both sides. The respondent had not conducted the litigation in any manner which lent weight to an application for reconsideration of the judgment.
5. The claimant appealed the decision to the Employment Appeal Tribunal. In her judgment, following an appeal hearing on 14 February 2020, Eady J noted as follows (paragraph 34), "*the grounds of appeal permitted to proceed in this Hearing lie not against the ET's findings on disability (described by Her Honour Judge Stacey as "impeccable"), but against its conclusion that the consequence of that finding was that the claimant's claims of direct discrimination and harassment must be struck out.*" That appeal was dismissed and the outcome was sent to the parties on 30 July 2020. However, it records the fact that the claimant had not appealed the tribunal's decision on disability.
6. The claimant now makes a further application for reconsideration. In a series of emails from 12 August 2021, the claimant highlights his belief that the respondent has acted dishonestly in denying that the claimant had a disability and in continuing to deny that it perceived the claimant to have had a disability.
7. The claimant refers to a number of pieces of correspondence and documentation that passed between him and the respondent at the time of his employment and which in his view further establish that he had a disability at the relevant time and that the respondent knew that fact. Those documents are letters dated 24 April 2018, 3 May 2018 and 14 May 2018, a document described by the claimant as a stress reduction plan and an extract of a document dated 14 May 2018 from the relevant decision maker. The letters are from the respondent and, "are within the respondent's disclosure so are not new evidence" (claimant's email to ET, 19 August 2021, 12.50hrs) and the documents were likely to have been part of the respondent's disclosure and were, or could with reasonable diligence, have been available for use at the hearing.
8. The tribunal has considered the claimant's application as an application made under rule 71 of the Employment Tribunal Rules.
9. Rule 72(1) provides that 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.

10. The claimant has already unsuccessfully applied for reconsideration in 2019 on the grounds of the respondent's alleged conduct of the proceedings. This application in 2021 is substantially the same as the previous application because the claimant is seeking to argue that the manner in which the respondent presented its case at the hearing was dishonest and that the documents that were or could have been available to the parties in fact supported the conclusion that the claimant was disabled.
11. In the 2019 reconsideration application, the tribunal ruled that the Hearing was presented and conducted fairly by the respondent. Both parties had a fair opportunity to present their case. At the Hearing, the tribunal understood and applied the law as to disability "impeccably" according to the appeal judge. The claimant did not appeal the findings on disability.
12. Now, more than 2 years after the Hearing and more than 1 year after the conclusion of the appeal process, the claimant makes a further application for reconsideration. He does not explain the further delay except as to say that he believes that the nature of his previous application and appeal was not properly understood. He now asks the tribunal to conclude that the respondent has lied to the tribunal and to the Appeal tribunal about the claimant's disability. He relies on documents that were part of the respondent's disclosure and were or could have been available to the claimant at the time.
13. The tribunal remains of the view that the respondent's conduct of the proceedings has not been in any way such as to cause material disadvantage to the claimant. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation. An application for reconsideration is not simply an opportunity to the parties to seek a re-hearing of a case.
14. The tribunal reminded itself of an aspect of its judgment of 15 January 2019 in which it stated that "The tribunal has given anxious consideration to the claimant's application. It finds that the respondent has not in any material sense contributed to the present position in which the claimant finds itself. The respondent has not conducted the litigation in any manner which lends weight to an application for reconsideration of the judgment. Nor did the claimant appear to believe so prior to the outcome of the Preliminary Hearing being known to the parties. Interests of justice is a consideration that relates to justice to both sides."
15. The tribunal concludes that there is no reasonable prospect of the original decision being varied or revoked. In addition, for the reasons set out above, this application is substantially the same as the claimant's previous application. Accordingly, for each these reasons, the application for re-consideration is refused.

EMPLOYMENT JUDGE BEEVER

SIGNED BY EMPLOYMENT JUDGE ON

20 September 2021

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