



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

AND

Mr P Phillips

Ministry of Defence
Defence Equipment &
Support (DE&S)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Employment Judge: Richardson

Date: 31ST January 2022

JUDGMENT ON THE CLAIMANT'S APPLICATION FOR RECONSIDERATION OF THE RESERVED JUDGMENT OF 30th SEPTEMBER 2021

The judgment of the Tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The history of the case and the reasons for the decisions made are set out in detail in the Judgment of 15th November 2021 sent to the parties on 23rd November 2021, and I shall not repeat them here. By letter dated 30th November 2021 setting out a statement of grounds and additional medical evidence not before the Tribunal at the preliminary hearing on 30th September 2021, the claimant seeks a reconsideration of that Judgment. The application for reconsideration relates to the additional evidence being provided by the claimant in respect of eye and shoulder conditions and a request that the Tribunal reconsider the medical evidence which was submitted at the hearing.

2. Rules 70, 71 and 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 schedule 1 provide (so far as relevant):

70 A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

71 Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72(1) 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 provision views on the application.

3. The respondent has objected to the application and grounds for the objection were provided in a letter dated 7th December 2021.
4. The grounds of application and grounds of objection have been considered.
5. The respondent has submitted that in the case of the letter from the orthopaedic consultant dated 21st January 2021, it was obtained before the preliminary hearing for case management at which the preliminary hearing was determined but also the date by which the agreed bundle hearing on 30th September 2021. The claimant has not objected to that statement as being inaccurate and I accept it as accurate. The letter was therefore in the claimant’s possession for some 8 months prior to the hearing on 30th September 2021.
6. Having read the letter from the orthopaedic consultant, his opinion would have been both relevant and credible with reference to arthritis in the right shoulder only, rather than ‘arthritis generally’ as pleaded.

7. The attention of the Tribunal was not drawn to this evidence at the relevant time: it was not mentioned in the claimant's witness statement and not mentioned at any time during the hearing. No mitigating factor(s) has/have been provided for why the evidence was not submitted prior to the hearing. In the case of the Optima Health letter, it could have been included in the bundle at some point between receipt of it in April 2021 and the hearing on 30th September 2021.
8. I refer to the authorities to be considered when a party seeks to persuade a tribunal to reconsider its judgment on the basis of new evidence. The leading authority is **Ladd v Marshall**. Applying the guidance in **Ladd v Marshall**, I find that the evidence (the letter of 21st January 2021 and report of 9th April 2021) were in existence and in the claimant's possession in each case for a considerable period of time prior to the hearing. It could have been submitted to the hearing had reasonable diligence been applied by the claimant.
9. The authorities require the Tribunal to exercise its discretion in applying 'in the interests of justice' on a review of its decision, in accordance with the underlying principle to which weight must be attached, namely the importance of the finality of litigation and the caution to be exercised in cases where due to an error on the part of (in this case) the claimant, relevant evidence has not been included. As already stated, there was no explanation why this evidence was not put forward by the claimant in good time to be included in the agreed bundle.
10. Additionally and for the avoidance of doubt the letter from Optima Health does not make an informed medical assessment of the claimant's various complaints about his eye condition(s) and appears to repeat in precis, what the assessor was told by the claimant and cursorily applied the definition of disability to the summary of conditions. This would have been insufficient to have resulted in a different outcome even if the letter had been provided at the relevant time.
11. No reason has been given otherwise why the Tribunal should repeat its already careful assessment of the evidence and why on doing so it would alter the outcome.
12. The application for leave to obtain expert evidence is the subject matter of a separate case management order.
13. For the above reasons at paragraphs 5 – 11 there are no grounds for the application to be reconsidered under Rule 72. There is also no reasonable prospect of the decision being varied or revoked and on this ground too, the application is therefore refused.

Case Number 1405920/2019

Employment Judge A Richardson
Date: 31 January 2022

Judgment sent to parties: 1 February 2022

FOR THE TRIBUNAL OFFICE