



## EMPLOYMENT TRIBUNALS

**Claimant:** Ms I Abdulnasir

**Respondent:** Invicta Care and Training Ltd.

**Heard at:** Watford, by CVP

**On:** 20 January 2022

**Before:** Employment Judge Price

### Representation

Claimant: In person

Respondent: Mr Sahel Ali, advocate

### JUDGMENT ON RECONSIDERATION APPLICATION

1. This is a reconsideration decision following an application made under rule 72 by the Respondent, Ms Mohammed on behalf of Invicta Care Limited.
2. Judgment was given for the Claimant at a hearing on 11.2.21 when the Respondent failed to attend the hearing. This was sent to the parties on 9.3.21. Mr Ali on behalf of the Respondent says this was received on 10.3.21. An application for reconsideration was made on 24.4.21.
3. The Respondent had a representative on record at all stages, Mr Sahel Ali from an organisation called Gaashaan. Mr Ali attended the hearing today and told me that he is an advocate with experience in the employment tribunal, but is not legally qualified.
4. The application stated that Ms Mohammed had been in a road traffic accident on 4.2.21 and was attending a physiotherapy appointment for a pain in her neck on the 11.2.21 hence she was unable to attend the hearing. On the basis of this I determined on the papers that the application did not have no reasonable prospect of success under rule 72 (1). However, I listed the application for a hearing as the application was out of time and I had to decide whether or not to use the discretion provided by the tribunal procedure to hear the application out of time.

5. Rule 71 provides that an application for reconsideration should be brought within 14 days of the date on which the decision was sent to the parties. In this case that would have been 23.3.21. However the application was made a month later on 24.4.21.
6. Mr Ali explained that he was instructed to attend the hearing on 11.2.21 but when he could not contact Ms Mohammed on the morning of the hearing decided not to attend. He told me today that he thought that attending without his client would not be helpful. He then spoke to Ms Mohammed when he got the Judgment, on 10.3.21, but at that stage she told him she was unwell and unable to deal with anything. She was suffering from dizziness and was unable to get out of bed. She was as he put it not in a 'good mood' and said she could not talk about the case. This was the reason that the application was not lodged until 26.4.21 when it was 6 weeks out of time.
7. In determining the application for time to be extended for application for reconsideration I have considered the state of Ms Mohammed's health. I have been told she had a car accident on 4.2.21 which left her with a pain in her neck and feeling shocked and shaken. She attended a physiotherapy appointment to assist with the pain in her neck on 11.2.21. This was a remote on-line appointment and it was sent to her by email. She was referred for this by her GP.
8. I have not seen any medical evidence to support the fact that Ms Mohammed was not well in the period between the Judgment being sent out to the parties and the application for a reconsideration taking place. There is no medical evidence, witness statement or indeed any other evidence as to what caused Ms Mohammed to feel unwell or how any such condition was affecting her. A submission was made on her behalf that she was feeling dizzy and unable to deal with matters, however that was the strongest it was put. Nor was any reason given as to why Mr Ali was not able to make the application on behalf of Ms Mohammed prior to the 24.4.21.
9. I was not told whether or not the period of feeling unwell on 10.3.21 was connected to the road traffic accident. However, I took into account that on the day of the hearing, 11.2.21, Ms Mohammed was well enough to attend a physiotherapy appointment through an online portal in order to assist with neck pain. This appointment was emailed to her and with assistance from her son she was well enough at this stage to manage this email and join the therapy session.
10. I have taken into account the submissions made by Mr Ali that Ms Mohammed disputes the issues in the underlying case and that she would like an opportunity to be heard on those matters.
11. I have also considered the interests of justice when determining whether to extend time to consider the substantive reconsideration application. I have weighed the interests of Ms Mohammed in having a second opportunity to

present her case against those of Ms Abdunnasir's interests in having the Judgment in her favour maintained and also the public policy interest in the finality of litigation. Weighing these matters against each other, and taking into account the lack of evidence that the Respondent has provided in respect of her medical condition as of March or April 2021 I do not grant my discretion to extend the time for this application.

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Employment Judge Price

Date\_\_20 January 2022\_\_

Judgment sent to parties

13.2.2022

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FOR THE TRIBUNAL OFFICE

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