EMPLOYMENT TRIBUNALS

Claimant: **Dr. Isabella Camburn**
Respondent: **Celtic Equine Veterinary Practice Limited**

Heard at: **Southampton** **On:** **17 March 2022**

Before: **employment judge Rayner**

Representation
Claimant: In person
Respondent: Mr T Woodward, solicitor

JUDGMENT ON APPLICATION FOR RECONSIDERATION

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 Claimant has applied for a reconsideration of the Judgment given verbally at the end of the hearing on 17 March 2022, in respect of which, written reasons were requested and provided to the parties on 21 April and 22.

2. The grounds of the Claimants application are set out in her email and letter dated 5 May 2022 received at the tribunal office on the same day.

3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the

parties. The application was therefore received within the relevant time limit.

4. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

5. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

6. The grounds relied upon by the Claimant are these:

7. The Claimant asserts that at the time of her dismissal. She had been given a diagnosis of vestibular hypo function and still not clear. She refers to the email which been sent to her employer, dated 17 December 20, 20. The Claimant asserts that she has been disadvantaged because the tribunal was unfamiliar with the condition. The Claimant asserts,and suggests that a different decision may have been reached had the condition diagnosed been multiple sclerosis, for example.

8. The Claimant also states that she is now able to demonstrate that at the time of her dismissal on the balance of probabilities, given her diagnosis she would continue to have significant impairment to her day-to-day life for a prolonged duration of time. She has provided some further information about her condition, and some of the impacts of that condition.

9. The legal test that the Tribunal considered in order to determine whether or not the Claimant was a disabled person at the material time, that is, up to and including the date of termination of the contract of 21 December 2020, was whether or not as at that date, the effect of the impairment relied on by the Claimant had lasted or was likely to last for 12 months.

10. On the basis of the evidence before the Employment Tribunal, I determined that effect of the impairment had not lasted 12 months at the material time and that there was insufficient evidence to conclude that it was likely to last at least 12 months, or it was likely to last the rest of the life of the person affected . In part this is because, in December 2020 , none of the Claimant's medical advisers were able to state or did state what the impact on the Claimant was or what it was likely to be going forward. There was simply no prognosis at that point.

11. Whilst the Claimant has argued that a subsequent diagnosis confirmed that she has a condition which will affect her for the rest of her life , that information was not available in December 2020.

12. The Claimant rightly states that the condition is not a well-known condition and is not one with which the Tribunal was familiar. It is for that reason that evidence of the diagnosis and the prognosis and the impact upon the Claimant were required. Further, it is not a condition which the statute determines will always be treated as a disability.

13. The Claimant has subsequently provided further general information about the condition and how it may impact upon an individual. Not only was this information not available in December 2020, but it was not provided to the employment tribunal at hearing. Even if the information had been provided by the claimant, it does not provide sufficient evidence that the claimant herself would have been affected in any of the ways set out and nor does it provide any evidence that any existing substantial adverse impact would be long-term in her case.

14. The arguments set out by the Claimant in her application for reconsideration are essentially the same arguments which she rightly raised at the hearing . These matters were considered in the light of all of the evidence presented to the tribunal before it reached its decision. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order". Whilst the factual matrix of this case is far from straightforward , and whilst the Tribunal had sympathy with the situation the Claimant found herself in and the complexities of the legislative tests she had to work with, disability is defined within the Equality Act 2010, and applying that definition, on the basis of the evidence available, the claimant was not, a disabled person at the material times. In addition, it is in the public interest that there should be finality in litigation, and the interests of justice apply to both sides.

15. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Rayner
Date: 1 June 2022

Judgment sent to the parties: 15 June 2022
FOR THE TRIBUNAL OFFICE