



EMPLOYMENT TRIBUNALS

Claimant: Mr. Frank Illoghalu

Respondent: Amey Services Limited

JUDGMENT

The claimant's application dated 23 May 2022 for reconsideration of the judgment sent to the parties on 11 May 2022 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The application seeks reconsideration of the judgment of 26 April 2022 by which the Claim was dismissed pursuant to Rule 47 of the Rules of Procedure 2013. The application is supported by further medical evidence, which has all been read and considered by Employment Judge Ross.
2. A tribunal has power to reconsider any judgment where it is necessary in the interests of justice to do so ([SI 2013/1237 Sch 1 r 70](#)). Per rule 72(1), the judge must consider whether there is no reasonable prospect of the original decision being varied or revoked.
3. Having taken into account all the further evidence and the contents of the application, and despite the sympathy which I have for the Claimant as a result of his impairments and their symptoms, there is no reasonable prospect of the original decision being varied or revoked for the following reasons:
 - 3.1. The application does not argue that the Tribunal misdirected itself in law by applying Rule 47 and the authorities referred to in the Reasons for the Judgment nor why it was not in the interests of justice to dismiss the Claim under Rule 47.

- 3.2. The focus of the application is, in essence, on the refusal of the application to adjourn made by the Claimant on 25 April 2022 - and on the refusal of the previous applications to adjourn. All the applications to adjourn were essentially based on two grounds:
- (a) Ill-health; and
 - (b) Lack of representation
- 3.2.1. At a Preliminary Hearing on 14 March 2022, Employment Judge Russell (now Acting Regional Employment Judge Russell) dismissed an application to postpone having taken into account all the medical evidence. EJ Russell gave full reasons for that decision: see paragraphs 6-23 of the preliminary hearing summary.
- 3.2.2. A second application to postpone was made in April 2022 on the same grounds. This was refused by EJ Russell for largely the same reasons as she had given for the earlier refusal. In particular, the medical evidence did not explain why the Claimant was not able to participate in a hearing, nor why he would be able to attend a hearing in 2023. EJ Russell made reasonable adjustments to facilitate the Claimant's attendance, particularly by converting the hearing to a video hearing.
- 3.2.3. A third application to postpone was made on 25 April 2022, on the first morning of the Final Hearing. The Tribunal considered the further medical evidence provided, the overriding objective and the authorities referred to the reasons of EJ Russell of 14 March 2022 (Teinaz, Iqbal and Ibeziako). The application was based on the same or very similar grounds as before, on similar medical evidence. This did not indicate that the Claimant would be any more able to attend a hearing in 2023 or at any later date. The application was refused for similar reasons to those provided by EJ Russell.
- 3.3. The further medical evidence has been considered but does not provide a reasonable prospect of the original decision being varied or revoked. The GP report dated 18 May 2022 does not state that the Claimant could not attend the hearing which was to be heard by video; and the report does not provide any prognosis nor explain whether the Claimant would be any more able to attend a hearing in 2023 or at some later point. The report of Dr. Sulaiman does not provide an opinion on whether the Claimant was fit to attend the hearing by video.
- 3.4. Moreover, the original Final Hearing listed in July 2021 had been adjourned on the two grounds relied upon at the later applications to adjourn and in the application for reconsideration. In the time that had passed since June 2021, the Claimant had not obtained

representation. The Tribunal had considered the overriding objective. It decided to proceed. It adopted reasoning similar to that set out by EJ Russell on 14 March 2022. The application for reconsideration refers to and relies upon the fact that the resources of the Respondent are significantly larger than that of the Claimant; but legal representation is not required in the Employment Tribunal where Tribunals are well accustomed to hearing cases with litigants in person, who have mental impairments, and where part of their duty is to put the parties on an equal footing so far as is possible and appropriate. In this case, for example, further adjustments could have been considered if requested; the Claimant did not, however, follow the invitation of EJ Russell to indicate any further required adjustments.

- 3.5. The reference to alleged non-disclosure was not raised before the Tribunal on 25 or 26 April 2022. This issue was addressed by EJ Russell at the PHC on 14 March 2022, and refused. There has been no appeal of that decision.

Employment Judge A.Ross
Date: 9 August 2022