



EMPLOYMENT TRIBUNALS

Claimant: Ms H Melville

Respondent: The Department for Work and Pensions

RECONSIDERATION JUDGMENT

The claimant's application dated 28 August 2022 for reconsideration of the judgment sent to the parties on by email dated 24 August 2022 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing her claims. That application is contained in an attachment to an email sent to the Tribunal offices on 28 August 2022.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).
3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384

Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.”

5. Similarly, in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16**, the EAT chaired by Simler P said in paragraph 34 that:

“There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry....”

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues. It also includes avoiding delay. Achieving finality in litigation is part of a fair and just adjudication, taking into account fairness to both parties involved.

The Judgment

7. The claimant's claims were all dismissed at a final hearing between 15 and 19 August 2022. The claimant represented herself at that hearing.

The Application

8. The claimant in her written application identifies the extent of her reconsideration application in its first paragraph. She states:

“I wish to apply to the tribunal to ask it to reconsider part of a judgement within 14 days of the date the judgement was given orally. I believe that it would be in the interests of justice for the original decision on Reasonable Adjustment at 5.2.2 refusal of training due to disabilities of Fibromyalgia, Anxiety and Depression to be reconsidered.”

9. Accordingly, the claimant's application has been treated as application to reconsider that part of the decision only. This issue was one that was specifically addressed in full by the parties at the hearing, both in evidence and closing arguments.

10. The claimant herself produced a document titled “*Claimant Closing statement 18th August 2022*” that specifically refer to this claim as follows:

“5.2.2 the relevant practice or PCP the refusal of refresher training I was at a substantial disadvantage more than minor or trivial compared to those without my disability as it deprived me of coping strategies/ mechanisms that helped me manage my anxiety, fibromyalgia and stress levels. People without my disabilities are much less likely to experience anxiety brain fog difficulty learning and remembering potential to affect my productivity at work and my mood.”

11. The respondent's written submissions, that were sent to the claimant in advance of oral submissions, deal with this specific claim in detail at paragraphs 24 and 25 as follows:

PCP2 – Refusing refresher / upskilling training

24. The Respondent denies this was a PCP, that it put the Claimant to any substantial disadvantage when compared to non-disabled employees in the Claimant's situation or that the Respondent could reasonably be expected to know that the Claimant was likely to be placed at any substantial disadvantage (in addition to the issues regarding knowledge of the anxiety condition generally).

25. In any event, the Respondent did attempt to organise training / upskilling for the Claimant both prior to and on her return to work. The Claimant declined a buddy when offered by Joanne Heyes but appears to be content with the support offered by Jade Davies. Such support was offered on 22nd July 2020 when the Claimant had been working only 2 days ([210] email suggests C began working on 20th July 2020 and notified Joanne Heyes on the same day). Joanne Heyes was on leave on 20th July and there were a series of failed communications on 21st July resulting in a short telephone conversation (due to the Claimant not wanting to have a lengthier conversation). In short, the Respondent did all it could to accommodate the Claimant.

12. Via oral judgment this claim was dismissed on two grounds:

12.1. The Tribunal found that there was no substantial disadvantage to the claimant in the way she was offered training; and

12.2. That in any event training had been offered in a way that amounted to a reasonable adjustment and/or negated the premise of the relevant PCP, i.e. if training was not refused there cannot have been a PCP of refusing training applied to the claimant.

13. In her reconsideration application the claimant appears to focus on re-arguing the question of whether she suffered a substantial disadvantage. This point was evidence and considered at the hearing, even being dealt with by the claimant herself in her written submissions. The claimant does not appear to raise any issue with the finding that a reasonable adjustment regarding training was made, albeit not the one the claimant preferred. The claimant also does not address the question of whether if training was provided to her the contended PCP of refusing training can have been applied to her.

Summary and Conclusion

14. The right to make a reconsideration application does not amount to a right to have an opportunity to re-argue a case.

15. The relevant matters of substance raised by the claimant in the reconsideration application made are all matters that were raised or identified at the hearing. Insofar as there are further peripheral matters referred to her reconsideration application, these are all matters that the claimant could have raised at the hearing.

16. The claimant's application appears to be no more than an attempt to re-argue one part of her claim, namely that she was put at a substantial disadvantage

regarding the provision of training which a non-disabled person would not encounter. Even if this were the case, the finding that a reasonable adjustment was made would mean the claimant's claim could still not succeed. In addition, the finding that training was not refused (albeit it took a different format for the claimant who was absent at the time of the original training) cannot be consistent with there being a PCP that training was refused.

17. Having considered the claimant's application I am satisfied there is no reasonable prospect of the original decision, which dealt with the claim as pursued at hearing, being varied or revoked. Accordingly there is no justification for this application to be the basis of an exception to the rule of finality in litigation.
18. For the above reasons the claimant's application for reconsideration is refused.

Employment Judge Buzzard
10 October 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
11 October 2022

FOR THE TRIBUNAL OFFICE