



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Lyons

**Respondent:** The Chief Constable of Avon and Somerset Constabulary

## **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 was dismissed by the Respondent on 9 August 2017. On 13 April 2022, he issued a claim of unfair dismissal against the Respondent arising from that dismissal. The claim was listed for a Preliminary Hearing on 7 September 2022 to consider whether it was brought in time.
2. For the reasons which I gave orally at the conclusion of that hearing, I found that claim was presented outside the applicable time limit, and that the Tribunal consequently did not have jurisdiction to consider it. My judgment was dated 7 September 2022, and was sent to the parties on 14 September 2022. No written reasons have been requested.
3. The Claimant now applies for a reconsideration of that Judgment. The grounds are set out in the Claimant's emailed letter of 20 September 2022. In summary, the Claimant says that the Tribunal did not sufficiently take into account the effect of the prescription medication he was taking throughout the relevant period.
4. 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 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application

- of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
5. Rule 71 provides that 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.
  6. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out 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.
  7. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

“34. [...] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. 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, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.

35. Where [...] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”
  8. The Claimant’s application was received within the relevant time limit. I therefore consider it under Rule 72.

9. The Claimant adduced some medical records in evidence for the hearing on 7 September 2022. His health was also dealt with in his witness statement and was the subject of cross-examination. The totality of the medical evidence presented by the Claimant was taken into account by the Tribunal in coming to its decision.
10. The Claimant's application suggests that there was additional medical evidence which he did not adduce for the hearing on 7 September 2022, regarding the medication he was taking in 2019. That evidence would have been available to him for the hearing on 7 September 2022, and ought to have been presented on that occasion. In any event, based on the Claimant's summary within the reconsideration application, I consider that it would not have changed decision of the Tribunal in any event.
11. Having carefully considered the Claimant's application, and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there is any reasonable prospect of the Judgment or any part of it being varied or revoked. The application for reconsideration is therefore refused.

Employment Judge Leith  
Date: 17 October 2022

Judgment sent to the Parties: 20 October 2022

FOR THE TRIBUNAL OFFICE