



EMPLOYMENT TRIBUNALS

Claimant: Mr J Olatunde

Respondent: Athena Care Limited

JUDGMENT

The Claimant's application dated 21 September 2022 for reconsideration of the judgment sent to the parties on 11 August 2022 (written reasons having been sent to the parties on 8 September 2021) is refused. There is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The thrust of the Claimant's application is that he suffered injustice by being required to pursue his claims at a hearing while unfit and/or unprepared to do so because he was suffering from the after-effects of Covid-19 infection. He also seeks to challenge the Tribunal's findings.

2. On 2 August 2022, the Claimant wrote to the Tribunal as follows:

This is to notify the Employment Tribunal that due to a positive Covid test result on 02 August 2022.

I will be isolating and perhaps not able to attend the in-person hearing listed for 8th and 9th August 2022.

Apologies for any inconvenience caused but will be grateful for a new listed date if it appears the hearing might not proceed as listed.

3. The Respondent objected to the Claimant's application by email the same day stating, among other things:

We would be grateful if as a matter of courtesy the Claimant could provide confirmation of his positive test result, given that he will have had to register any positive lateral flow test with the NHS, this should be easily available.

4. On 3 August 2022, the Claimant responded saying, among other things:

I am unwell to participate in any form of hearing listed for 8 and 9 August 2022 due to a positive Covid-19 test following a spate of illness.

5. The Claimant explained that he had visited A & E on 2 August 2022, placed in isolation and tested for Covid-19 which was shown to be positive. The Claimant asked the Respondent to book a quiet meeting room with full internet access if they were insisting on a video hearing.
6. On 5 August 2022, the Claimant was informed of the decision of Regional Employment Judge Freer:

The postponement application is refused. The Claimant needs to provide independent medical evidence showing they are not fit to participate in the hearing. The hearing is by video therefore the Claimant can attend from home.

7. The hearing was held on 8 and 9 August 2022 by video.
8. Notwithstanding a discussion at the commencement of the hearing about reasonable adjustments to be made for the Claimant, he did not say he was too unwell to prepare or participate as he now contends.
9. In support of his application for reconsideration, the Claimant has provided a document showing that he attended the A & E department of Darent Valley Hospital on 2 August 2022 and that he had Covid-19 infection not requiring treatment.
10. Rule 70 provides that reconsideration of a judgment will take place where the Employment Judge considers that it is necessary in the interests of justice to do so.
11. Rule 71 provides that applications for reconsiderations of judgments should be presented in writing within 14 days of the date on which the written record was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and should explain why reconsideration is necessary.
12. Rule 72(1) notes that an Employment Judge shall consider any application for reconsideration made under rule 71, and that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked then the application shall be refused and the Tribunal shall inform the parties of the refusal.
13. Reconsideration is not a method by which a disappointed party to proceedings can get a second bit of the cherry: Stevenson v Golden Wonder Ltd 1977 IRLR 474.
14. In considering an application for reconsideration, the Tribunal must have regard not only to the interests of the party seeking the reconsideration, but also to the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation: Outasight VB Ltd v Brown 2015 ICR D11 EAT.
15. The Tribunal concludes that it is not necessary in the interests of justice to reconsider the judgment. At no stage in these proceedings has the Claimant

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provided any evidence to show he was not fit to participate in proceedings or prepare for it. The document from Darent Valley Hospital does not assist the Claimant in this regard. Nor was it apparent to the Tribunal that he was unfit to participate in the hearing or that he was insufficiently prepared for it.

16. The Tribunal is satisfied that the Claimant was afforded a fair hearing.
17. Insofar as the Claimant wishes to challenge the Tribunal's findings and conclusion, it appears he wishes to reopen and re-litigate his case. That is seeking a "second bite of the cherry" and is not a ground for reconsideration. In the circumstances, the balance falls in favour of the Respondent and the public interest requirement that there should be finality of litigation.
18. The Claimant's application for reconsideration is accordingly refused.

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Employment Judge Pritchard

Date: 3 October 2022