



EMPLOYMENT TRIBUNALS

Claimant: Mr M Skubis

Respondent: Leicester City Council

JUDGMENT ON A RECONSIDERATION

The Claimant's application for a reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

Background

1. This Claimant submitted his claim to the Employment Tribunal on 12 July 2021.
2. The parties attended a telephone preliminary hearing on 13 December 2021 at which the Claimant was subject to an Unless Order.
3. The Claimant failed to comply with the terms of the Order and his claim was dismissed on 16 March 2022.
4. On 24 May 2022, the Claimant e-mailed the Tribunal explaining he was not sure what he had done wrong, that he was at a disadvantage because English was not his first language, he did not have legal representation and that he was suffering with stress.
5. I treated his e-mail as an application for relief from sanction and directed that an open preliminary hearing should take place to determine if the Claimant's application should be permitted to proceed given it was submitted out of time and, if yes, whether it should be granted.
6. The open preliminary hearing was listed on 2 November 2022 and the Claimant was advised that an interpreter had been booked.

7. The Claimant e-mailed the Tribunal at 9.15am on the morning of the hearing saying that he could not attend because of stress and anxiety. He attached a fit note to his e-mail citing 'stress and arthritis' confirming that he was not fit for work, but which had expired on 1 November 2022. He asked for the hearing to be rescheduled but did not say when he anticipated he would be able to attend.
8. Given the lateness of the Claimant's notification, the fact that the medical certificate had expired and was, in any event, a certificate of fitness for work and not fitness to attend the hearing, I proceeded with the case. I heard submissions from the Respondent and refused the Claimant's application for relief from sanction to be heard out of time.

The reconsideration application

9. The Claimant e-mailed the Tribunal on 14 November 2022 seeking a reconsideration of my decision and expressing regret that he did not attend the hearing on 2 November 2022. He explained that he was not well enough to attend because of his mental health and attached another fit note citing 'stress and arthritis' covering the period 2 November 2022 to 9 November 2022. He made a further application for relief from sanction but provided no grounds to support it.

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules")

10. The Rules provide:

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.— (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting 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. The notice may set out the Judge’s provisional views on the application.....’

11. Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural irregularity depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.
12. It is not sufficient for the Claimant to apply for a reconsideration simply because they disagree with the decision.

Conclusion

13. The Claimant explains that he was not able to attend the hearing because of his mental health. He has submitted a fit note citing that he was not fit for work at the time of the hearing but has provided no evidence in support of his ability to attend a Tribunal hearing. Furthermore, he has not given an indication of when he might be able to attend in the future.
14. However, the Claimant has not provided any explanation why he made his original application for relief from sanction out of time, or why it would be in the interests of justice for it to be granted. Absent that information, I cannot conclude that it would be in the interests of justice to reconsider my original decision.
15. The Claimant does not advance any special reasons to persuade me that his application should be heard again.
16. Accordingly, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked and it is not in the interests of justice to reconsider it. The application is, therefore, refused.

Employment Judge Victoria Butler

Date: 22 November 2022

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.