



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Mir

Respondent: IQVIA Limited

Employment Judge Laidler (on the papers)

JUDGMENT ON RECONSIDERATION

The claimant's application for reconsideration of the 17 November 2022 is refused

REASONS

1. The hearing to determine the issue of disability was on the 6 May 2022. The decision was given orally to the parties that day and judgment sent on the 20 June 2022. The tribunal found that the claimant was not disabled at the time of the acts complained of (January – 20 March 2020) and the claims of disability discrimination were dismissed. A request for written reasons was made by the claimant but not seen by the judge until 11 October 2022. Written reasons were sent to the parties on the 3 November 2022.

2. The tribunal found that the claimant did suffer from an arm and shoulder injury in December 2019 which had an adverse effect on her ability to carry out day to day activities. It further accepted that the effect was substantial in the relevant period of January to March 2020. That was only a 3 month period and the effects had not lasted 12 months.

3. It was made clear throughout the hearing and again in the reasons that the issue of whether the condition was 'likely to last 12 months' was to be assessed at the date of the act(s) complained of. Paragraph C4 of the Guidance on the definition of disability is set out at paragraph 25 of the reasons. The tribunal could not find that

from the evidence before it.

4. As a preliminary matter the tribunal had to consider a Supplemental Impact statement served by the claimant the day before the hearing. It was similar to the one served with the claimant's reconsideration application save that a few matters have been added. There having been 4 previous case management hearings at which orders were made and the claim having been issued in 2020 the tribunal found it would not be in accordance with the overriding objective for the claimant to be allowed to rely on this late statement. There was a document attached to it from a physiotherapist dated the 3 May 2022 and for the same reasons and in view of the above section of the Guidance the tribunal indicated it would not be taken into account.

5. The relevant provisions of the Employment Tribunal Rules 2013

RECONSIDERATION OF JUDGMENTS

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.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

Conclusions

6. The claimant in her application takes issue with all aspects of the tribunal's decision including the exercise of its case management powers at the outset of the hearing. They are not subject to the Rules on reconsideration.
7. The claimant challenges the tribunal's findings on the evidence it heard. They were its findings and the fact the claimant does not agree with what the tribunal found is not open to challenge by way of a reconsideration application.
8. The claimant produces text messages for physiotherapy appointments. They are not to the point as there was no dispute and the tribunal accepted that the claimant did have an injury which impacted on her.
9. At paragraph 18 the claimant states 'it is undoubtedly persuasive that the claimant continues to be impacted 2.5 years later'. That statement is contrary to the Guidance and the case law which provides that a tribunal must consider the circumstances at the time of the alleged discrimination and 'anything which occurs after that time will not be relevant to assessing this likelihood'.
10. The claimant also places reliance on the respondent not producing evidence at the preliminary hearing. It was not for them to do so. The burden of showing that she satisfied the statutory definition was on the claimant.
11. It is not in the interests of justice that the judgment be reconsidered. There is no reasonable prospect of the original decision being varied or revoked and the application is refused.

Employment Judge Laidler

Date: 30 November 2022

SENT TO THE PARTIES ON

1 December 2022

FOR THE TRIBUNAL OFFICE