



EMPLOYMENT TRIBUNALS

Claimant: Miss S Tufail
Respondent: The Alan Turing Institute
Before: Employment Judge Nicklin
Sitting at: London Central
Date: 8th December 2022

JUDGMENT ON RECONSIDERATION

The Claimant's application dated 27th October 2022 for reconsideration of the reserved judgment sent to the parties on 13th October 2022 is refused.

REASONS

1. By an email to the tribunal timed at 23.51 on 27th October 2022 and copied to the Respondent's representative, the Claimant applied for reconsideration of the reserved judgment in this case, which was sent to the parties on 13th October 2022.

Preliminary matters

2. There are two preliminary matters for me to consider in respect of the application before considering it in accordance with Rule 72(1) of the tribunal's Rules of Procedure. The first is the submission of the application by email by someone other than the Claimant who is not on record as her representative. The second is whether the application has been submitted within the 14-day time limit provided for in Rule 71.
3. As to the first issue, I consider that it is in accordance with the overriding objective to consider the application which, on its face, is a word document signed electronically by the Claimant running to 11 pages. The email was sent

by the Claimant's sister who assisted her at the hearing before me on 15th September 2022. Having regard to what the Claimant says about her health (and evidence referred to in the judgment dated 13th October 2022) it is, in any event, a reasonable and appropriate adjustment to consider the application in circumstances where it was presented by someone other than the Claimant and who, although not her recorded representative, has been actively assisting her in the case.

4. As to the time limit issue, I am satisfied that this application has been presented in time because:

4.1. Rule 71 provides that the application must be presented in writing (and copied to the other parties) within 14 days of the date on which (in this case) the judgment was sent to the parties. The judgment was sent on 13th October 2022.

4.2. Rule 4(1) of the tribunal's Rules of Procedure provides that:

...an act required by these Rules, a practice direction or an order of a Tribunal to be done on or by a particular day may be done at any time before midnight on that day...

4.3. Rule 4(3) confirms that where an act is required to be done within a certain number of days from an event (here the date the judgment was sent to the parties), the date of that event shall not be included in the calculation. The last date was therefore 27th October 2022 and the application was sent by email before midnight.

5. I apologise to the parties for the delay in receiving this judgment on the application. This arose because of an administrative delay in the application being placed before a judge during November (which I communicated to the parties at the time). After that time, the application has been dealt with as promptly as possible.

Application for reconsideration

6. The basis of the application is that:

6.1. There is new evidence which has become available since the hearing which was not available and could not have been foreseen at the time of the hearing in September 2022; and

6.2. The interests of justice require a reconsideration.

7. In support of her application, the Claimant has provided an 11-page word document setting out her case for reconsideration (I shall refer to this document as the "Grounds of Application"). This is supplemented by a PDF document running to 242 pages ("the PDF Bundle"). This includes the reserved judgment dated 13th October 2022, various documents which were included in the hearing bundle, some new documents and two copies of the judgment of the EAT in Cox v Adecco & Others UKEAT/0339/19/AT, 9th April 2021 (HHJ Taylor).

8. Having reviewed all of the documents provided, I consider that the application is based on the following three issues/arguments:
 - 8.1. Medical evidence concerning the Claimant's health which may be relevant to the issues determined in the strike out application ("**the Medical Evidence issue**");
 - 8.2. Further written evidence set out in her Grounds of Application regarding the Claimant's health and a chronology of events concerning the material period between 2021-22 along with documents concerning such events in the PDF bundle which the Claimant asks the tribunal to take into account ("**the Further Evidence issue**");
 - 8.3. The need for further adjustments through the case management process of the claim and at the hearing on 15th September 2022 (in light of the Claimant's health) to ensure a fair hearing ("**the Adjustments issue**").
9. At this stage of the application, without hearing from the Respondent, I must consider whether there is a reasonable prospect of the original decision being varied or revoked. If there is no reasonable prospect, the application will be refused at this stage. If there is a reasonable prospect, I must make directions to hear from both parties and proceed to determine the application.

The Medical Evidence issue

10. The Grounds of Application say that new evidence has become available. However, having reviewed the PDF bundle, all medical evidence and reports provided are dated well before the hearing on 15th September 2022. Most relevant reports were included within the hearing bundle and therefore considered as part of the deliberations undertaken in reaching the decision to strike out. The judgment dated 13th October 2022 explores the Claimant's health in detail and took into account what evidence there was of her health against the chronology of events before the tribunal.
11. In the first two pages of the Grounds of Application, the Claimant refers to a letter from iCope Psychological Therapies dated 7th September 2022. The Claimant had undergone 7 self-help sessions through iCope which consisted of low intensity cognitive behavioural therapy. This was to manage symptoms of depression and the letter refers to ongoing anxiety symptoms and reports made by her during clinical sessions in July 2022 about her mental health. It confirms that she had been discharged from the service to an online self-help programme. This information was before the tribunal at the time of the hearing in September and, whilst not expressly referred to in the judgment, was part of the factual picture taken into account. The Respondent's counsel made submissions on the iCope letter and the other documentation submitted by the Claimant on 14th September 2022. The difficulties experienced by the Claimant during July were recorded in the judgment at paragraph 39 and the iCope letter lends support to the Claimant's submission which was considered at the hearing. Whilst the Claimant refers to aspects of paragraph 45 of the judgment, those observations are not undermined by the iCope letter or the points made in the Grounds of Application.
12. In any event, the iCope letter is not a form of diagnostic medical evidence and does not assist the tribunal to resolve the issues set out at paragraph 44.2.3 of

the judgment (i.e. when the Claimant will be in a position to comply with a case management timetable). I recognise that this litigation process presents challenges for the Claimant in terms of her health and I repeat the observations made about these challenges in paragraph 41 of the judgment.

13. There is no *new* medical evidence presented in this application which could provide a reasonable prospect of a variation or revocation of the decision. Any other report to which reference is made (in the Grounds of Application or PDF bundle) was either before the tribunal or could have been obtained with reasonable diligence and placed before the tribunal given any such report pre-dated the hearing and the issues of compliance had been live between the parties since shortly after the first case management hearing in October 2021.

The Further Evidence issue

14. Having considered the evidence set out, I am satisfied that this constitutes a mixture of information already before the tribunal (about the chronology of events and challenges faced by the Claimant); amplification of that information and further information which, if necessary and relevant, could have been supplied at the time of the hearing. It is not in accordance with the overriding objective to reopen a decision simply to consider more information (which could reasonably have been advanced at the time, if needed) about the same issues which have been determined thoroughly at the hearing and by subsequent, careful deliberation. The Claimant has set out a chronology of matters such as (but not limited to): difficulties with her Access to Work assessment; aspects of her fatigue; her involvement in the BBC event; behaviour activation counselling; a university disability review; problems with the Claimant's laptop and repair; difficulties with her company and HMRC; loss of holiday; a back sprain in July 2022; an application for PIP payments and the challenges of orientating through the case management obligations as a litigant in person.
15. There is no material disclosed which gives rise to any reasonable prospect of the decision to strike out being varied or revoked. Most points were part of the factual matrix of the case before the tribunal on 15th September 2022 and the tribunal fully considered the proportionality of the decision in light of the Claimant's situation. Any new fact or point added does not, in my judgment, establish grounds which might alter the conclusions reached under Rule 37(1)(d) or (e) because the information set out does not answer the prejudice and difficulties with achieving a fair trial within a reasonable amount of time.

The Adjustments issue

16. On page 7 of the Grounds of Application, the Claimant says:

In attending the hearing without adjustments such as being able to record the hearing, key notes taken and shared, having clear communications of what to expect and order of business and when to respond and the expectation ie discovering on the day that the respondent will speak first and then I respond, was difficult (sic).

17. A number of adjustments were made at the hearing on 15th September. Employment Judge Adkin ordered that the Respondent provide a skeleton argument to enable the Claimant to focus on the arguments that the Respondent wished to make in the application. It was clarified at the beginning

of the hearing that the Claimant had received this and the Claimant was offered a break to enable her to absorb the information provided (where she had not had sufficient personal time beforehand to digest the document in advance). This was declined by the Claimant but she was given breaks as and when needed in order to best access the hearing. The arrangements for the hearing were explained at the outset because it was necessary to first hear the application from the Respondent. The Claimant was also permitted to attend the hearing with her screen off to reduce sensory overload. The Claimant had her sisters attending and one of her sisters contributed orally to the hearing on her behalf. There was no request to record the hearing as an adjustment to the rule that parties must not record a hearing.

18. As to the wider question of adjustments, the tribunal considered these within the context of the case in deciding the application. For example, the Claimant raised the issue in her submissions (paragraph 39); the tribunal considered previous adjustments made to aid compliance (paragraphs 44.1.3 and 44.2.3); and, in carrying out a proportionality analysis, the tribunal considered whether further adjustments could reasonably be made with a reformulated case management timetable (paragraph 45).
19. In the circumstances, there are no grounds on the issue of adjustments which provide a reasonable prospect to the Claimant of the decision to strike out being varied or revoked.

Case of Cox v Adecco & Others

20. As the Claimant has included this EAT judgment in her PDF bundle, I have considered it as part of my review of this application under Rule 72(1). The case of Cox appears to have been included because it deals with a strike out decision recently considered by the EAT. However, that case concerns strike out on the grounds that a claim has no reasonable prospects of success. The EAT observed that it was necessary to first identify the issues in the claim in order to decide whether those issues have a reasonable prospect of success. The application made by the Respondent in the instant case was not made on that basis and the tribunal (by the judgment dated 13th October 2022) struck out the claims under Rule 37(1)(d) and (e). Accordingly, the case is of no assistance in respect of the issues determined at the hearing on 15th September 2022.

Conclusion

21. It follows that, having considered the application for reconsideration, there is no reasonable prospect of the judgment dated 13th October 2022 being varied or revoked and the application must be refused in accordance with Rule 72(1) of the tribunal's Rules of Procedure.

Employment Judge Nicklin

Date 8th December 2022

Case No: 2203396/2021

JUDGMENT SENT TO THE PARTIES ON

09/12/2022

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FOR THE TRIBUNAL OFFICE