



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 makes a second application for a reconsideration of my judgment dated 2 November 2022.
2. By way of background, the Claimant did not attend an open preliminary hearing on 2 November 2022 to determine his application for relief from sanction out of time. He notified the Tribunal at 9.15am on the morning of the hearing that he could not attend due to stress and anxiety. He attached a fit note to his e-mail confirming that he was not fit for work because of '*stress and arthritis*', 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 in the future.
3. 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.
4. The Claimant made his first application for a reconsideration of my judgment on 14 November 2022 which I refused on 22 November 2022.

5. The Claimant's second application for a reconsideration provides further medical information. He explains that he could not attend the hearing on 2 November 2022 because medication which he takes following an accident 'a few years ago' affects him mentally and causes dizziness. In consequence he is unable to focus or drive. Further, he had no-one to support him on the day.
6. He attaches two hospital letters regarding a neck condition dated June and September 2009, along with a patient summary from his GP.

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

7. 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.....'

8. 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.

9. It is not sufficient for the Claimant to apply for a reconsideration simply because they disagree with the decision.

Conclusion

10. The Claimant's application is a further explanation of his reason for non-attendance at the hearing on 2 November 2022. However, I note that the hospital letter dated September 2009 (therefore over thirteen years ago), says that he is '*on the road to recovery*' and discharges him from care. The GP records show that he was last prescribed the relevant medication in January 2022. I do not consider this to be up-to-date medical evidence, so it does not assist him.
11. Regardless, the Claimant fails again to provide 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.
12. The Claimant does not advance any special reasons to persuade me that his application should be heard again.
13. 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: 15 December 2022

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