



EMPLOYMENT TRIBUNALS

Claimant: Mr S Merrell
Respondent: Bell Decorating Group

JUDGMENT

The claimant's application dated **2 October 2022** for a reconsideration of the judgment sent to the parties on **12 July 2022** is refused. The Claimant has previously applied for reconsideration on **21 July 2022**, which was refused by decision sent on **13 September 2022**.

REASONS

The application for reconsideration does not meet the requirements of rule 71 of the Employment Tribunal Rules of Procedure 2013 ('Procedure Rules'). Furthermore, there is no reasonable prospect of the original decision being varied or revoked.

1. Pursuant to rule 71 of the the Procedure Rules, an application for reconsideration must be made in writing, and copied to all parties of the appeal, within 14 days of the date the written reasons were sent.
2. This application for reconsideration is made out of time. Written reasons were sent on 12 July 2022, and the reconsideration judgment with reasons was sent on 13 September 2022. This application for reconsideration, made by email on 2 October 2022, is not made within that time limit for either decision. No reasons have been given for the application being made out of time. I have considered whether to exercise my discretion to extend time pursuant to rule 5 of the Procedure Rules, but I see no good reason to do so. Mr Merrell has previously been able to apply for reconsideration within the relevant time frame and there is no reason to suggest he could not have done so had he wished to here.
3. In addition, Mr Merrell has provided no indication that this application for reconsideration has been copied to Bell Decorating Group. Mr Merrell's first application had the same defect, which was highlighted in the previous refusal to reconsider the original judgment.

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4. For the reasons set out in paragraph 2 and 3 above, the application does not meet rule 71.
5. Nevertheless, I have considered whether it is necessary in the interests of justice for this matter to be reconsidered and for the reasons set out below, conclude it is not. Pursuant to rule 72(1) I again consider whether there are reasonable prospects of the original decision being varied or revoked for the reasons set out by Mr Merrell and I conclude that there are not.
6. Mr Merrell argues that the decision should be reconsidered because video evidence crucial to his case was unavailable at the hearing (points (3) and (5) of the application). Mr Merrell previously raised this issue in his earlier application, and for the reasons set out in paragraphs 10 & 11 of the Judgment of 13 September 2022, I conclude that there is no reasonable prospect of the original decision being varied or revoked.
7. Mr Merrell states that there was no HSE report at the first disciplinary hearing. This was fully considered at paragraph 65 of the original judgment.
8. The reconsideration judgment of 13 September incorrectly referred to Mr Merrell as Mr Bell in paragraph 3. A corrected judgment has now been sent to the parties. However, as set out in the reconsideration judgment, there is no reasonable prospect of the decision being varied or revoked on the basis Mr Merrell was not offered help with his mental health problems.
9. Mr Merrell states that the decision should be reconsidered because Bell Decorating Group sought to have the hearing postponed. This argument is without merit, the Procedure Rules allow for parties to seek adjournments, without more, this cannot be a reason to vary or revoke the original decision.
10. Mr Merrell argues Bell Decorating Group's main witness was not called for cross examination. It is the Respondent's decision which witnesses they call. There was no witness statement before the Tribunal from Whitney Middleton. Bell Decorating Group provided evidence of anonymised testimony from their investigation. That evidence was considered in the context of whether Bell Decorating Group's decision to dismiss Mr Merrell was unfair. I can see no reasonable prospect of the decision being varied or revoked on this basis.

Employment Judge Scott
Date: 19 December 2022

Judgment sent to the Parties: 04 January 2023

FOR THE TRIBUNAL OFFICE