



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondents

Ms K-M Barnett

V

HM Courts & Tribunal Service

DECISION

In exercise of my powers contained in Rule 72 Employment Tribunals Rules of Procedure 2013 I refuse the claimant's application for reconsideration on the grounds that there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. On 17 November 2022 the parties were sent the judgment and reasons detailing the outcome of the consideration of the preliminary Issue which determined that:
 - a. At all material times the claimant was not a disabled person within the meaning of s6 of the Equality Act 2010.
 - b. The claimant's complaints against the respondent are dismissed at the relevant time the claimant was not a disabled person within the meaning of section 6 of the Equality Act 2010.
2. On 30 October 2022 the claimant submitted an application to reconsider that judgment and for written reasons of the reasons for the decision that were delivered to the parties ex tempore at the hearing on 14 October 2022 to be issued.
3. The application to reconsider as articulated in the claimant's email of 30 October 2022 was based on the claimant's request that the judgment should be reconsidered on the basis that it is necessary in the interests of justice to do so. The substance of the claimant's email sets out the reasons why the Tribunal should reconsider the Judgment and reasons sent to her on 5 August 2022 and it is that reconsideration request that is considered in this Decision.

4. The power to reconsider a judgment is contained in Rule 70 to 73 Employment Tribunals Rules of Procedure 2013. The Rules enable a tribunal to reconsider a judgment where it is necessary in the interests of justice to do so. Rule 72 provides that an Employment Judge shall consider the application. If the Judge considers that there is no reasonable prospect of the decision being varied or revoked the Judge shall refuse the application.
5. I have applied Rule 72. The claimant in her email of 30 October 2022 set out the grounds on which she purports to rely on Rule 70, namely that it is necessary in the interests of justice and in reality the claimant is challenging the conclusions reached. The claimant in essence bases her request on being allowed to submit further medical evidence which she stated she was in the process of obtaining, which the claimant did not have at the time of the Preliminary Hearing. The claimant seeks to assert that having accepted that the claimant was at the material time suffering from a physical impairment from in or about July 2020 that had impact on her ability to carry out normal day to day activities that she was in fact subject to physical impairments which *“had at the relevant time lasted for at least 12 months a. is likely to last at least 12 months and finally that it is likely to last for the rest of my life.”* The bundle of documents before me at the Preliminary Hearing extended over 75 pages and I was directed to specific documents within the bundle to which the parties expressly referred me and the relevant evidence was referred to in reaching the findings of fact that were made to determine the issue. There was not presented to me at the Preliminary hearing to support the claimant’s assertion in her application. The claimant did not attach to her original reconsideration application any medical evidence to support her application but instead indicated that she was in the process of obtaining evidence to show that her disability at the relevant time had lasted 12 months.
6. On 8 March 2023 the claimant forwarded an email to the Tribunal and included an attachment which the claimant describes to be:
“medical reports showing that I had been dealing with FND symptoms in November 2019 a year prior to my contract of employment coming to an end. I was referred to a cardiologist in October 2019 this was due to chest pain and numbness down my left arm which are FND symptoms”
7. The claimant asserts in her application that her disability at the relevant time had lasted 12 months and that she was in the process of obtaining evidence to show this as she did not have it at the time of the October 2022 judgment and this was because she had requested medical records from her GP fore the relevant time.

8. It is to be remembered that the decision to determine at the Preliminary issue was based upon evidence produced at the time of the hearing on 14 October 2022.
9. The claimant has on 8 March 2023 sent to the tribunal two documents by way of attachments and they evidence consultations recorded on the patient record on 2 November 2019 neither of which documents or the reason for the consultations were referenced in the hearing. The fact and nature of the 2019 consultations were in the claimant's knowledge when she attended the hearing and she did not refer to them directly. At a case management before me on 13 May 2022 the claimant was given clear direction concerning the disclosure of the evidence that she was required to produce at the Preliminary Hearing of her alleged disability and the attachments were not included in the bundle which they ought to have been had the claimant considered they were records she identified as being "*copies of Medical records of the claimant's GP and neurologist or other relevant specialist in relation to the claimant's claimed disabling impairment of a functional neurological disorder.*" [26] para 6.1. They were not.
10. The claimant in real terms seeks to challenge the conclusions reached on the arguments before me at the preliminary hearing for which in reality the appropriate avenue is by way of appeal. At the hearing the claimant relied on limited medical evidence and did not include all historic medical evidence including detailed GP records that she considered relevant to the impairment subsequently diagnosed as being a functional neurological disorder.
11. The interests of justice require finality between the parties subject to any appeal and the reconsideration provisions do not entitle a disaffected party to reopen issues which have already been determined, in the findings of fact that have been reached on the evidence and argument before it. There is nothing in the arguments advanced by the claimant which could lead the tribunal to vary or revoke its decision.

Employment Judge Dean
9 March 2023