



EMPLOYMENT TRIBUNALS
London Central Region

Claimant: Ms D Dubow

Respondent: The Royal Marsden NHS Foundation Trust

JUDGMENT

1. The Claimants remaining claims are struck out.
2. The OPH on 19/5/23 is cancelled.

REASONS

1. The Claimant raised her Claim in August 2021 and, on account primarily of the manner in which the proceedings have been conducted by the Claimant, the original full merits hearing (scheduled for September 2022) had to be vacated and the case remains at a preliminary stage with no case management dates or final hearing date scheduled.
2. On 6/1/23, following a long history of delays and adjournments caused by the Claimant, I made a CMO the object of which was to give the Claimant a further lengthy period to either get fit to be able to pursue the claims or to provide some evidence backed up by the opinion of a professional doctor as to whether she would be fit to proceed within a reasonable time scale and if so when. For this purpose she was directed to provide a personal statement and medical report by the end of April 23, to be followed by an OPH on 19/5/23 at which the whole question of whether the claims should be allowed to proceed was to be considered.
3. The Claimant has not complied with the CMO in that she has not provided either a personal signed statement or up-to-date medical statement from a medical professional dealing with the matters detailed in the preceding paragraph. The Claimant has had just under 4 months to prepare/make arrangements for the provision of the ordered documentation. Instead she wrote to the Tribunal on 2/5/23 saying she was still unfit and asking for a postponement of the hearing on 19/5/23. She does not state when she might be fit.
4. The Respondent replied on 3/5/23 making an on-notice application for the claims to be struck out (such application to be dealt with on the papers) and for the hearing on 19/5/23 to be cancelled to save NHS resources.
5. The Claimant then replied on 4/5/21 resisting the application and attaching a fit note from a doctor at the Tudor Lodge Health Centre stating simply that the Claimant is not fit to work and will remain unfit to work from 1/4/23 to 30/6/23 by reason of “anxiety depression, chronic pain”. This note does not state whether the Claimant is fit to be able to prepare for trial or attend a trial and if not when she might be able to do so.
6. Further, the Claimant has failed to explain why (when it is understood she is under the care of her GP and other medical professionals) she has failed to comply. In this regard, it is of

note that the Claimant was able in February/March 2023 to send detailed correspondence/information to a prospective legal adviser.

7. The Claimant suggests that she is still in the process of looking for a solicitor who would prepare her case. However, having raised her claim in August 2021 has had more than ample to time to locate legal representation.
8. The Claimant has not attended a PH since July 2022 (there have been two subsequent PHs in September 2022 and January 2023 (a relisting of a PH scheduled for October 2022 postponed on the application of the Claimant) and she has sent relatively limited (albeit detailed) correspondence to the ET/the Respondents solicitors since that time, mainly related to seeking postponements of/confirm her non-attendance at PHs in late 2022/early 2023.
9. Further delay in the proceedings will make a fair hearing impossible.
10. I therefore strike out the remaining claims under ET Rules of Procedure Sch. 1 paras. 37(1)(b), (c) (d) and (e) on account of the Claimant's unreasonable conduct of the proceedings, non-compliance with the ET's Orders and continued failure to actively pursue her claims and the fact that it is now impossible to prepare for and hold a fair trial of those claims within any reasonable time scale.
11. It is equitable and in line with the over-riding objective for the ET to make a determination on strike-out based on the papers and current position without the need for the PH on 19.05.23 which the Claimant has stated she would not be able to attend in any event.

J S Burns Employment Judge
London Central
5/5/2023
For Secretary of the Tribunals
Sent to Parties: 05/05/2023
