



EMPLOYMENT TRIBUNALS

Claimant: Ms A Gowers

Respondent: Department of Work and Pensions

JUDGMENT

The claimant's application dated 6th May 2023 for reconsideration of the oral judgment given to the parties on 23 November 2023 and sent to the parties on 28th April 2023, is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment determining whether, at the relevant time, and on the basis of the impairments relied on, she was able to satisfy the statutory definition of disability for purpose of s6 Equality Act 2010. That application is contained in a 7 page document attached to an email dated 6th May 2023.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. The majority of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. In that sense they represent a “second bite at the cherry” which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

8. That broad principle disposes of almost all the points made by the claimant. However, there are some points she makes which should be addressed specifically. The burden of proof in showing that the requirements of section 6 Equality Act 2010 are met are for the claimant to show. In preparation for the hearing the claimant produced a witness statement explaining the circumstances of the impairments she relied on, together with copies of medical notes. Unfortunately, the medical evidence provided did not support some of the claimant's evidence and her witness statement did not address all aspects of the impairments relied on. I am satisfied however, that she was able to add to her written evidence at the hearing by answering questions put to her by the respondent's representative and the respondent did not object to the production of further medical records from the claimant which were emailed in during the course of the afternoon. Further evidence was also adduced in answers to questions I asked. The claimants application for reconsideration attempts to now add to the evidence she gave at the hearing and suggests alternative answers she would have given had different questions been asked. Her application does not contain any new evidence which was not available at the time of the hearing or has only come to light since then. Having reviewed my notes of the hearing I am satisfied that all relevant questions were asked and, on the basis of the evidence before the Tribunal, including the claimant's oral evidence, I reached my decision.

Conclusion

Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Sharkett

DATE 17th May 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
19 May 2023

FOR THE TRIBUNAL OFFICE