



EMPLOYMENT TRIBUNALS

Claimant: Ms G Ahir

Respondent: St Swithun Wells Catholic Primary School

JUDGMENT

The claimant's application dated 30 April 2023 for reconsideration of the reconsideration judgment sent to the parties on 16 April 2023 is refused.

REASONS

There is no reasonable prospect of the original decision to reject her reconsideration application of 15 October 2023 or of the original judgment on disability (sent to the parties on 30 September 2022) being varied or revoked, because:

1. This is the third application for reconsideration directed at the judgment sent to the parties on 30 September 2022 by which I found that the claimant was disabled by reason of migraines only. The procedural history is set out in the reconsideration judgment sent to the parties on 16 April 2023. I refer to it but do not repeat it.
2. A party may make more than one application for reconsideration; nothing in the Employment Tribunals Rules of Procedure 2013 prohibits it and rule 72(1) specifically refers to the possibility. That provides

"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."
(my emphasis)
3. A previous incarnation of what is now the reconsideration provision was considered in Raybright TV Services Ltd v Smith [1973] I.C.R. 640 NIRC where it was held that a second application is permissible but that it would be only in the most exceptional circumstances that a second application would succeed after a first application had been properly refused. Such exceptional circumstances were present in that case.

4. There was an error in paragraph 1 of the reconsideration judgment sent to the parties on 16 April 2023 in that, again, I referred to the original judgment as having found the claimant to be disabled by reason of asthma; in this I repeated the previous error. However, it is quite clear from paragraph 10.2 and 10.3 that I was fully aware that the judgment I was asked to reconsider was that which found the claimant to be disabled by reason of migraines and not by any other condition. In other words it is clear that I understood that I was being asked to reconsider my judgment that, in the claimant's case at the relevant period, asthma was not a disabling condition (as well as and in combination with other health conditions). In those circumstances, the error in paragraph 1 can be corrected under rule 69 and a corrected judgment and certificate of correction are sent with this judgment.
5. A disability discrimination claim is available to an individual who is disabled within the definition of s.6 of the Equality Act 2010 at the time of the acts complained of. The question of whether the impact on the individual of particular conditions was long term should be judged as at the time of the acts complained of; it is not a question of whether the claimant is disabled now or whether the adverse impact became substantial because of the acts of the employer and has since continued for 12 months. To some extent, the description of events by the claimant appears to focus on the continuing impact of the acts she complains of not on evidence which shows the impact had been long term before those acts or that a previous adverse impact was likely to recur.
6. To the extent that the claimant argues that there has been a failure on the part of the Employment Tribunal to consider properly evidence which was before it at the hearing on 15 & 16 September 2022 then that is not a proper basis for an application for reconsideration – the claimant is seeking to appeal against a decision she disagrees with.
7. As to the errors referred to by the claimant:
 - a. The errors in describing the disabling condition have been corrected by the second reconsideration judgment and as described above.
 - b. An electronic file of documents was available to me at the hearing of 15-16 September 2022. The claimant was represented at that hearing and the electronic file contained evidence which had clearly been provided by the claimant as part of her disclosure. The claimant argues that this should not be described as a joint bundle, apparently on the basis that her then representatives had not made what she considers would have been sufficient efforts to include evidence in that electronic file which supported her case. The respondent and the Tribunal are entitled to presume that when a claimant is represented at a hearing and the representatives raise no issues about omission of documents then the electronic file for the hearing is complete. This would have been checked at the outset of the hearing. Any continued dissatisfaction by the claimant with the description of the file does not affect the substance of the judgment.
 - c. The claimant should direct her complaints about the conduct of previous advisers to those advisers.
 - d. The alleged failings of those advisers to request medical evidence was relied upon in the first reconsideration application which was dealt with by the judgment sent to the parties on 16 April 2023.

8. The claimant refers to evidence received “after 15 October 2022 to March 2023” but does not pinpoint any specific evidence which she states would be likely to make a difference to the decision on disability and the only explanation for the previous non-availability of the evidence that she gives is the alleged failings of her previous advisers. None of it is evidence which did not previously exist and it could, in my view, have been obtained prior to the original hearing. It is not in the interests of justice – which include the interests of finality in litigation – for the claimant to be able to rely upon late acquired evidence now.
9. In summary, the arguments raised by the claimant in the application dated 30 April 2023 are substantially the same as those raised in her application dated 15 October 2022 which has already been refused. There are no special reasons why this repeated application for a reconsideration should be entertained.

Employment Judge George

Date 19 June 2023

JUDGMENT SENT TO THE PARTIES ON

19 June 2023

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FOR THE TRIBUNAL OFFICE