EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr W Taplin	v	Bristol City Council

JUDGMENT ON RECONSIDERATION

In exercise of powers contained in *Rule 72 of the Employment Tribunals Rules of Procedure 2013* (**"Rules"**), the claimant's application of 18 July 2023 for reconsideration following written reasons sent to the parties on 4 July 2023 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. I presided over a preliminary hearing on 26 April 2023 to determine whether or not the claimant was disabled for the purposes of *section 6 Equality Act 2010* and so, by extension, whether he was able to continue with his claim based on disability discrimination. I found that the claimant was not disabled and dismissed his disability claim. The balance of his claims continued.

2. I gave oral reasons for my decision on 26 April 2023. I did so with broad reference to the small bundle of documents containing the claimant's medical evidence and to the comments the claimant himself made about his case during the course of the hearing. Written judgment was dated on the same day. At the end of the hearing, the claimant requested written reasons. Those written reasons were sent to the parties on 4 July 2023, and were dated 18 June 2023.

Applicable Rules

3. *Rule 71 of the Rules* requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. The claimant made his

application within 14 days of the written reasons being sent to the parties. The application for reconsideration is therefore made in time.

4. *Rule 72 (1) of the Rules* provides:

   "An Employment Judge shall consider any application made under rule 71. 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. …"

5. Where an Employment Judge refuses an application following the application of Rule 72(1), then it is not necessary to hear the application at a hearing. Rule 72(3) provides that the application for reconsideration should be considered in the first instance, where practicable, by the same Employment Judge who made the original decision. I am the judge who made the decision in respect of which the claimant makes his application for reconsideration.

6. The interest of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which much be regarded against the interests of justice (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*).

Grounds and reasons of reconsideration application

7. The claimant complains that there has been a delay between the hearing and sending written reasons, which he considers means that I may have forgotten key aspects of the case.

8. The claimant then makes the following points in response to matters included in my written reasons:-

   8.1. The respondent admitted the claimant had a mental health condition with work suffering as a result;

   8.2. That I did not consider the symptoms described as *"obsession, fixation and compulsion"* as mental health conditions in their own right and says that I have improperly narrowed the impairments being considered to *"stress, anxiety and depression"*;

   8.3. I operated a checklist approach when considering day to day activities which the claimant is capable of doing;

   8.4. I have misconstrued the evidence about the source of the claimant's anxiety and his hobby;

   8.5. The claimant does not understand the application of *J v DLA Piper*; and

   8.6. I placed too much reliance on the submission of the respondent and not enough on his sworn evidence.

Decision on the reconsideration application

9. The claimant now contends that the delay between the hearing on 26 April 2023 and the signing of the written reasons on 18 June 2023 causes an issue. In his words: *"It does appear to me that there is a legitimate concern that the judges recollection of what was said has been impaired due to the time that has elapsed"*. In my view, this is a misdirection from the core point that oral reasons for the decision were given at the end of the hearing. The written reasons do not differ from the conclusions drawn in my oral decision. The claimant also says I refused to explain my decision in the hearing. That is not so. I gave judgment. I did not engage with the claimant's follow up queries and remarks which appeared to me to be in aid of re-arguing his position after judgment had been delivered. That is a different matter entirely.

10. I deal briefly with the other points raised at paragraph 8 above to record my views about each of them:-

    10.1. As noted by the respondent in the response to the reconsideration application, the claimant's account of the respondent's concern is misleading. The respondent's management does not admit he has a mental health condition in itself, but only expresses concern about the impact on the wellbeing of a colleague caused by work stress. It is not conclusive evidence of a *disability* and I was entitled to treat that evidence as I did.

    10.2. The claimant misses the point with this complaint. His pleaded claim relied upon stress, anxiety and depression. A previous hearing recorded 'hypertension' as a disability relied upon but the claimant did not rely on this. The claimant has never sought to define his disability as obsession/fixation/compulsion. To do so at the preliminary hearing would have required him to apply to amend his claim. The hearing was not to determine *"was the claimant disabled".* It was to determine *"was the claimant disabled by the impairments he claims he was disabled by"* (ie stress, anxiety or depression). It would have been an error for me to consider some other, non-pleaded disability at the hearing. I was restricted by the claimant's own scope as set out in his claim documents and at the previous hearing.

    10.3. I did not operate a checklist approach, and I explained this to the claimant at the time. When considering disability, the case law directs that I must consider what cannot be done as well as what can be done. The claimant was not directing his submissions at all at 'normal day-to-day activities' and I properly prompted him with some examples of those activities (with reference to the applicable guidance) in order to see if he could articulate any impairment to other day to day activities. He could not, and I was left with the conclusion that the claimant was not at all affected with almost all day-to-day activities save for those I do identify and consider in my judgment.

    10.4. I drew conclusions from the evidence in a way which I consider was appropriate and open to me. An application for reconsideration is not a route for me to change my mind without some other new evidence once I have drawn such conclusions.

    10.5. The claimant accepts that he was not aware of this case until shortly before the hearing. In my view, the claimant has sufficient legal training and

experience to have found out about the case and its application ahead of the hearing. In any case, I explained how I came to the decision I did in my oral judgment, and the claimant's understanding of the case does not alter the conclusions I drew from applying the case to the evidence.

10.6. The claimant's evidence did not support him in making out that he was disabled as he alleges. The respondent's submissions were oriented around that simple point, and I agree with them. This does not mean I placed undue weight on the submissions. It merely means that the claimant's evidence itself did not indicate to me that he was disabled because, in his own words, he was suffering from an acute reaction to a stressful event at work. The way the claimant described his impairments, from the beginning of the hearing to the end, falls squarely within the *J v DLA Piper* rubrik of an employee suffering mental health symptoms which are triggered by a work event and a stressful episode. The claimant did not persuade me that he was disabled for the purposes of bringing this disability claim.

11. The claimant's application re-makes the points he made in the hearing. It does not introduce any new evidence and appears to me to be an attempt at an impermissable second bite of the cherry after the hearing did not transpire as planned or desired. In my view, this application is an attempt to re-litigate what was explored in detail at the hearing. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can adequately explain why the matter was not raised before. The claimant's application does not identify any new matters of that nature.

12. It is not the purpose of reconsideration to allow a party to dispute a determination that a party disagrees with and it is a fundamental requirement of litigation that there is certainty and finality. If conclusions made are disputed with regard to whether a correct interpretation of the law was made, they are matters for an appeal which the claimant is able to make to the Employment Appeal Tribunal. These are not matters for a reconsideration request.

13. I do not doubt that the claimant is unhappy with the judgment but, for all of the reasons outlined here, the claimant's application for reconsideration of the judgment in his case is refused. There is nothing raised here which moves me at all towards considering it is necessary in the interests of justice for me to reconsider the decision made. Those interests lie firmly in affirming the finality of this litigation and refusing the reconsideration request.

Employment Judge Fredericks-Bowyer
Date: 3 August 2023

Sent to the parties on 21 August 2023

For the Tribunal Office