



EMPLOYMENT TRIBUNALS

Claimant: Mrs T Toth

Respondent: Great Bear Distribution Ltd

HELD AT: Wrexham **on:** 4 August 2023

BEFORE: Employment Judge T. Vincent Ryan

DECISION on Applications for Reconsideration

1. On 10 July 2023 I conducted a preliminary hearing that considered whether the claimant was a disabled person in accordance with s.6 Equality Act 2010, and the respondent's applications for strike out and deposit Orders, as well as an application for a Costs Order. I announced oral decisions in each case; I signed the written outcomes on 11 July 2023 and they were sent to the parties on 12 July 2023.
2. In a series of emails dated 21 July 2023 the claimant's representative has applied for Reasons for the Costs Order (which are provided under separate cover), and reconsideration of the judgment that the claimant was not disabled at the material time, and of the decision to make Deposit Orders in respect of continuing claims; this Decision is in respect of those latter two reconsideration applications. I have considered the applications separately; they do not stand or fall together; having considered the overriding objective of the Tribunal I have reached separate conclusions but record them together in this document.
3. Rules 70 – 73 ETs (Constitution & Rules of Procedure) Regs 2013 are concerned with reconsiderations.
4. A Tribunal may, either on its own initiative or on the application of a party, reconsider any judgments (the original decision) where it is necessary in the interests of justice to do so. Where any such decision is reconsidered the Tribunal may confirm vary or revoke it. If, on reconsideration, a decision is revoked, then it may be taken again. I have not considered it necessary to reconsider my decisions, either of them, but the claimant's representative has made an application.

5. The process for an application for reconsideration involves a written request within 14 days of the date on which the written communication of the original decision sent the parties. The claimant has complied with this requirement.
6. Upon receipt of a proper request for reconsideration a judge shall consider it and in particular whether there is any reasonable prospect of the original decision being varied or revoked. If the judge considers that there is no reasonable prospect of variation or revocation the application shall be refused, and the parties shall be so informed. Otherwise representations shall be invited from the parties including as to whether the application can be determined without a hearing.
7. If the application has not been refused the original decision shall be reconsidered at a hearing, if such a hearing is necessary in the interests of justice. There is provision for further written representations to be made if the judge dispenses with a hearing.
8. Where practicable the initial consideration (that is whether there is any reasonable prospect of the original decision being varied or revoked) should be by the Employment Judge who made the original decision, or by the full panel that made the decision as appropriate. In this particular case the judgment and decision that are the objects of the claimant's applications were made by me, sitting without non-legal members.
9. With regard to the decision that the claimant was not a disabled person at the material time:
 - 9.1. I have re-read my original decision and the claimant's reconsideration application. The reconsideration application is based specifically on a document dated the 23 November 2021, the claimant's health screening form. I have re-read that form. In that form the claimant has indicated to the respondent that she lives with an illness impairment or disability (physical or psychological) which may affect her ability to work safely, effectively and hygienically, which may be made worse by work, and which required reasonable adjustments. Suggest reasonable adjustments were said by the claimant to be lighter duties as she was unable to lift heavy weights and she needs the support of her husband. On the basis of that form the claimant's representative says that the respondent had actual or at least constructive knowledge (ought reasonably to have known) that the claimant was a disabled person.
 - 9.2. I accept that the claimant self-declared that she had an illness impairment or disability whether physical or psychological to the respondent as indicated on the form. I accept that the respondent knew or ought reasonably to have known the claimant's self-reported view as to the state of her health, how it may impact her ability to work, how it may be made worse by work, and how, in her opinion, she required reasonable adjustments. I take into account that this form amounts to self-reporting.
 - 9.3. When making my decision I knew that in the claimant's opinion she is, and was at the material time, a disabled person; I also knew that she drew it to the attention of the respondent; I also knew that she has consistently

maintained for some years that she is a disabled person. I have adjudged that the claimant is not a disabled person. I have given reasons for my decision and I see no reason to reconsider its just because the claimant self-reported that she feels that she is disabled and therefore the respondent knew her opinion.

9.4. In this litigation the respondent denies that the claimant is a disabled person although her opinion was clearly drawn to its attention.

9.5. I stand by the written reasons for my decision in finding that the claimant was not a disabled person at the material time. There is no reasonable prospect of that decision being varied or revoked. The application for reconsideration is refused.

10. With regard to the decision to make deposit orders:

10.1. I have re-read my decision and Order, with rationale, and the claimant's representatives application for reconsideration.

10.2. The claimant's representative says that such matters are fact specific and that it is difficult to assess prospects of success without hearing evidence. I agree. It was for this reason that I did not strike out the claimant's claims as having no reasonable prospect of success. It would not be in the interests of justice to do so in a discrimination claim where evidence ought to be heard if claims are being pursued provided there is some reasonable prospect of success.

10.3. After hearing from both parties on 10 July 2023 and giving the matter careful consideration I reached the conclusion that the claimant has little reasonable prospect of success in pursuing the claims in respect of which I then made deposit orders.

10.4. I took into account the available details of means to pay.

10.5. There is no reasonable prospect of the deposit orders being varied or revoked. The claimant's application is refused.

11. In summary, both applications for reconsideration are refused.

Employment Judge T.V. Ryan

Date: 04 August 2023

JUDGMENT SENT TO THE PARTIES ON 22 August 2023

FOR THE TRIBUNAL OFFICE Mr N Roche