



EMPLOYMENT TRIBUNALS

Claimant: Ms L Wills

Respondents: British Telecommunications plc (1)
Brookson Solutions Limited (2)
EPAM Systems Limited (3)

SECOND RECONSIDERATION JUDGMENT

The claimant's application dated 25 May 2023 for reconsideration of the tribunal's Judgment to strike out her claims dated 10 May 2023 and sent to the parties on 10 May 2023 is refused.

The reconsideration Judgment has been reviewed in the light of medical information which was not passed to me at the time I reached the original decision. Having taken into account the new medical information, my decision to refuse the reconsideration application stands and the claims remain struck out following the Judgment dated 10 May 2023.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the reasons set out in the original Reconsideration Judgment together with the additional reasons set out below.

1. The claimant has applied for a reconsideration of the decision to strike out her claims on the basis that they were presented outside the statutory time limit, the tribunal having concluded it would not be just and equitable to extend time.
2. The claimant submitted a letter from Dr Jenny Judge of The Burghwood Clinic dated 26 May 2023. This was not before me when I first reconsidered the Judgment. I have now taken this additional evidence into account. This is the only further evidence I have received. The claimant had indicated in her reconsideration application that there would be further GP records but these have not been seen by me.
3. Dr Judge states that she initially assessed the claimant on 24 February 2023 and she has been providing treatment to the claimant for a number of her health issues since then.

4. In her letter, Dr Judge explains the claimant's complex multisystem health issues, describing the cause and symptoms of these. Of relevance to the issue of the late submission of the claimant's originating application are the following:

Autistic Spectrum Disorder is a lifelong development disability in which there are issues with social interaction and communication, difficulties transitioning from one activity to another, a tendency to becoming overly focused on detail, and issues with sensory perception. It is common for people on the autistic spectrum to become overwhelmed when faced with new situations and for them to need adaptations such as additional time and support to navigate these. Ms Will's autism is further complicated by Pathological Demand Avoidance, which as the title suggests, is a form of extreme avoidance and resistance to everyday and extraordinary demands that life places on a person.

The combination of the above issues poses a wide range of day-to-day challenges, and persons with the above issues have to learn to manage their conditions (and environments) carefully or risk a catastrophic collapse in their health and level of functioning. The nature of this deterioration can be severe and can leave patients bed-ridden and unable to manage day to day self-care; this often improves over time, but some patients are not able to return to their previous level of functioning.

Overexertion (physically or cognitively) or being subject to increased psychosocial stress can all lead to deterioration, and with awareness and experience of this, patients with the above disorders are only able to cope with unusual demands (such as those of the tribunal application process) as and when their health and cognitive functioning allows them to, which can cause unavoidable delays.

5. This part of Dr Judge's letter is generic and provides no information as to whether the claimant herself experienced these outcomes.
6. She goes on to say:

I understand that Ms Wills was suffering from a period of global deterioration in her health, with loss of physical and cognitive function at the point she began the tribunal application. She had to manage her internal resources carefully, and had to prioritise earning an income, with tribunal tasks necessarily taking second place. She was able to work but only reduced hours, and with a significant number of sick days and personal leave days. Mr Wills was only able to complete stages of the tribunal application process during periods when she had made sufficient recovery; with this then triggering a recurrent deterioration in health. As such, the tribunal application process was subject to numerous health-related delays, with the final application coming 5 months after the recommended deadline.

7. Dr Judge was not treating the claimant at the relevant time and her comments do not reflect her assessment of the claimant at the time in question. She is recording what she has been told, presumably by the claimant herself as she does not refer to any other source of information.
8. It is worth repeating that the primary issue was not whether the claimant had any of the conditions she relies on but whether they provide an explanation for the late submission of the claim. If they did provide such an explanation, this would be one factor in weighing up the balance of prejudice to determine whether it would be just and equitable to extend time.
9. In my earlier reconsideration Judgment and I stated that, in the circumstances of the length of the delay and the claimant's capacity to do other things within the period, some medical evidence explaining the claimant's particular situation was required.

10. Although the letter from Dr Judge seeks to provide this evidence, it does not provide evidence of the claimant's capacity at the relevant time, only that her conditions can cause difficulties in dealing with unusual demands such as the tribunal application process. It does not address the issue of the claimant managing to carry out various other 'unusual demand' tasks such as pursuing a complaint to the Solicitors Regulatory Authority and Legal Ombudsman and pursuing her application for PIP disability benefit. There is no contemporaneous medical evidence, other than the claimant's own testimony, to indicate that she was suffering a global deterioration in her health such that she could not submit a tribunal application until five months after the deadline.
11. I also note that the claimant's submissions relied on her experiencing 'PTSD response', which is not a condition referred to by Dr Judge, or the claimant's GP in the letters previously before the tribunal.
12. In conclusion, I am not satisfied that the further information provided by Dr Judge changes matters and it does not persuade me to reach a different conclusion.
13. I must also consider whether any of the information the claimant now wishes to rely on was available at the time of the preliminary hearing on 22 March 2023. By that time, Dr Judge was treating the claimant. There appears to be nothing in Dr Judge's letter of 26 May 2023 which could not have been said in March 2023. The claimant was aware from previous case management orders that it was up to her to provide medical evidence of her position. She has failed to explain why this report was not requested by her at the time.
14. Even if I take the claimant's case at its highest, the issue for me is whether it would be just and equitable to extend time to allow her claim to proceed. I must consider the prejudice to both parties in either allowing or refusing the extension of time. As I stated in my original Judgment, my view is that the claimant's claims are unlikely to succeed, however genuinely they are felt. I note that EJ Khan considered that the claims were unclear and listed a further case management hearing for the purpose of clarifying the claims. At the second case management hearing, EJ Hodgson recapped the discussion regarding the claims and concluded that he was '*concerned that there are difficulties with the claims as pleaded. I am not satisfied that the claimant has set out her claims adequately or at all. To the extent she has set them out, I am satisfied that there is a question as to whether there is a reasonable prospect of success. These matters are in addition to whether they are out of time.*' These comments echo my own conclusion on the merits, reached with the benefit of a better understanding of the claimant's claims.
15. In conclusion, there is no reasonable prospect of the original decision to strike out the claims as being presented out of time being varied. The reconsideration application, including consideration of Dr Judge's letter, fails.

Employment Judge Davidson
Date 8 September 2023

JUDGMENT SENT TO THE PARTIES ON

08/09/2023

FOR EMPLOYMENT TRIBUNALS

Notes

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