



EMPLOYMENT TRIBUNALS

Claimant: Miss V Way

Respondent: Frimley Health NHS Foundation Trust

JUDGMENT

The claimant's application dated **22 October 2023** for reconsideration of the judgment sent to the parties on **22 October 2023** is refused.

REASONS

1. On submitting her claim, the claimant ticked boxes in the claim form identifying her claims as unfair dismissal and disability discrimination.
2. The dates of employment given by her on the form show that she has less than two years' service. Two years' service would normally be necessary for an unfair dismissal claim. Accordingly she was sent a "strike out warning" proposing that her unfair dismissal claim was struck out and giving her until 14 July 2023 to give reasons why the claim of unfair dismissal should not be struck out.
3. Following the respondent's response to the claim, and seeing no response from the claimant to the strike out warning, on a rule 26 review I prepared a judgment striking out the unfair dismissal claim. This is dated 8 September 2023. It was sent to the parties on 22 October 2023.
4. The claimant immediately responded, pointing to an email she had sent on 14 July 2023 saying why her unfair dismissal claim should not be struck out, and attaching screenshots in support. This was referred to me on 2 November 2023.
5. I have treated this as an application by the claimant to reconsider the judgment of 8 September 2023.

6. The claimant is correct to say that she sent a reply to the strike out warning within time. That should have been on the file at the time I came to consider the judgment, but it was not. It was not her fault that it was not on the file.
7. I have considered whether, in the light of that response, the original judgment should stand.
8. I refuse the application for reconsideration because I consider there is no reasonable prospect of the original decision being varied or revoked. Although the claimant in her email and appendices criticises the respondent's decision to dismiss her, and makes points that may well be relevant to her disability discrimination claim (which continues despite the striking out of her unfair dismissal claim) there is nothing in that material that suggests she has the right not to be unfairly dismissed without the necessary two years' service. The claimant appears to be saying that her dismissal amounted to disability discrimination. If so, that can be dealt with as part of her disability discrimination claim, in respect of which further orders will be made and a case management preliminary hearing listed. The unfair dismissal claim remains struck out.

Employment Judge Anstis

Date: 6 November 2023

JUDGMENT SENT TO THE PARTIES ON
28 November 2023

FOR THE TRIBUNAL OFFICE