



EMPLOYMENT TRIBUNALS

Claimant: Mrs F Douglas

Respondent: BUPA Care Homes (ANS) Limited

JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The claimant was dismissed by the respondent on 11 November 2021. On 4 June 2022, the claimant issued a claim of unfair dismissal against the respondent arising from that dismissal. The claim was listed for a Preliminary Hearing on 3 August 2023 to consider whether it was brought in time.
2. For the reasons which I gave orally at the conclusion of that hearing, I found the claim was presented outside the applicable time limit, and that the Tribunal did not have jurisdiction to consider it. My judgment was dated 3 August 2023, and was sent to the parties on 13 September 2023. No written reasons have been requested.
3. The claimant now applies for a reconsideration of that Judgment. The grounds are set out in the claimant's letter of 14 September 2023 received on 15 September 2023. The letter states, "*Please I am asking you to reconsider my case, I was not able to do anything. I was very sick during those time. I though (sic) doctor letter was good enough so I am asking for a appeal of my case*".

The Law

4. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules").

5. Under Rule 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
6. Rule 71 provides that an application for reconsideration under Rule 70 must be made in writing (and copied to all other parties) within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.
7. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Rule 72(1) provides that where an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused and the Tribunal shall inform the parties of the refusal.
8. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows: “34. [...] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.
Where [...] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”
9. The claimant’s application was received within the relevant time limit, although it does not appear that a copy was sent to the respondent. Whilst I note the application also states, “.. I am asking for an appeal of my case”, I have considered it under Rule 72.
10. For the Preliminary Hearing on 3 August 2023, the claimant disclosed a letter from her General Practitioner dated 26 May 2023. The claimant also gave oral evidence about the state of her health and was cross examined about this. In her application for reconsideration she has repeated the point about her state of health, which is not new information and was raised and ventilated at the hearing. This evidence about her health was taken into account in my decision.
11. Having considered the importance of finality in litigation and that reconsideration is not a right or opportunity to rehearse the arguments that have already been made, I am not satisfied that there is any reasonable prospect of the Judgment being varied or revoked. The application for reconsideration is therefore refused.

**Employment Judge Bansal
7 November 2023**

JUDGMENT SENT TO THE PARTIES ON
5 December 2023

FOR THE TRIBUNAL OFFICE